

14/81

ON APPEAL
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

BETWEEN :-

GORDON GRANT AND COMPANY (1965)
LIMITED (Plaintiff) Appellant

- and -

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO (Defendant) Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
LONDON SW1E 6HB

Solicitors for the Appellant

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn
LONDON WC2A 3UL

Solicitors for the Respondent

(i)

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 34 of 1979

O N A P P E A L
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :-

GORDON GRANT AND COMPANY (1965)
LTD (Plaintiff) Appellant

- and -

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO Respondent

RECORD OF PROCEEDINGS

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BUT NOT REPRODUCED

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Summons to parties to settle Records	6th June 1974
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Order granting Conditional Leave to Appeal	12th December 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.34 of 1979

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :-

GORDON GRANT AND COMPANY (1965)
LIMITED (Plaintiff) Appellant

- and -

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO (Defendant) Respondent

10

RECORD OF PROCEEDINGS

No. 1

In the High
Court

Writ of Summons

TRINIDAD AND TOBAGO

No. 1

WRIT OF SUMMONS

Writ of Summons
10th December
1968

IN THE HIGH COURT OF JUSTICE

No. 2344 of 1968

BETWEEN

GORDON GRANT AND COMPANY (1965) LIMITED
(In Voluntary Liquidation) Plaintiff

20

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Defendant

ELIZABETH II by the Grace of God
Queen of Trinidad and Tobago
and of Her other Realms and
Territories, Queen, Head of
the Commonwealth.

In the High
Court

To: THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
Red House, Port-of-Spain.

—
No. 1
Writ of
Summons
10th December
1968

We command you that within eight days after the service of this Writ on you, inclusive of the day of such Service, you do cause an appearance to be entered for you in our Supreme Court, Port-of-Spain, in an action at the suit of Gordon Grant & Company (1965) Limited and take notice that in default of your so doing, the Plaintiff may proceed therein, and judgment may be given in your absence.

10

WITNESS: The Right Honourable Sir Hugh Wooding, C.B.E., Chief Justice of our said Court at Port-of-Spain, in the said Island of Trinidad, this 10th day of December, 1968.

N.B. - This Writ is to be served within twelve calendar months from the date hereof, or if renewed within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Solicitor at the Registrar's Office, at the Court House, in the Town of Port-of-Spain.

20

If the Defendant enter an appearance must also deliver a defence within fourteen days from the last day of the time limited for appearance unless such time is extended by the Court or a Judge, otherwise judgment may be entered against without notice, unless in the meantime been served with a summons for judgment.

STATEMENT OF CLAIM

The Plaintiff's claim is against the defendant for:

1. A declaration that the Board of Inland Revenue is, by virtue of the provisions of the Income Tax Ordinance, Ch. 33. No. 1, under an obligation to make a refund of tax amounting to \$16,376 (together with interest thereon at the statutory rate) deducted from dividends paid to the plaintiff in 1962 out of the profits earned by the paying companies prior to the year 1962.
2. Payment of the said sum.
3. Costs.
4. Such further and/or other relief as the nature of the case may require.

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40

This Writ was issued by Messrs. Fitzwilliam, Stone & Alcazar, 78, Independence Square, in the City of Port-of-Spain whose address for service is the same.

In the High Court

FITZWILLIAM, STONE & ALCAZAR
Solicitor for Plaintiff

No. 1
Writ of
Summons
10th December
1968

No. 2
Statement of Claim

No. 2
Statement
of Claim
5th February
1969

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

10 No. 2344 of 1968

B E T W E E N

GORDON GRANT AND COMPANY (1965) LIMITED
(In Voluntary Liquidation)

Plaintiff

AND

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Defendant

STATEMENT OF CLAIM

20 1. The plaintiff company is a company incorporated in Trinidad and Tobago under the provisions of the Companies Ordinance, Ch.31.No.1, and does and at all material times did, carry on a trade or business in Trinidad and Tobago.

30 2. Included in the return made by the plaintiff company to the Commissioners of Inland Revenue (hereinafter called "the Commissioners") of the plaintiff company's income for the year 1962 were three dividends which had been paid to the plaintiff company in 1962 out of profits earned by the respective paying companies prior to the year 1962. Pursuant to section 23 of the Income Tax Ordinance, Ch. 33. No. 1 (hereinafter called "the Ordinance") income tax amounting to \$16,376.00 was deducted

In the High Court

No. 2

Statement of Claim
5th February 1969

from the said dividends by the paying companies.

3. In June 1963 the Income Tax (Amendment) Act, 1963 (hereinafter referred to as "the Act") was passed, section 44 of which (introducing a new section 76(a)(1) into the Ordinance) provided that:-

"Notwithstanding anything contained in this Ordinance, other than the provisions of section 75, but subject to this section, income tax on all income (other than income tax on all emoluments, within the meaning of section 53c), that would have been chargeable to tax for what would have been the year of assessment, 1963, had the Income Tax (Amendment) Act, 1963 not been passed, is hereby discharged."

10

4. In accordance with the provisions of the said section 76 (A)(1) of the Ordinance, the Commissioners in response to a request made on behalf of the plaintiff company, formally assessed the plaintiff to tax in respect of its income for the said year 1962, and formally discharged the said assessment.

5. Section 76(A)(2) of the Ordinance, as amended by the Act, provides that:-

20

"Where the tax payable by any person for the year of income 1963 is less than the tax that would have been payable for what would have been the year of assessment 1963 had the Income Tax (Amendment) Act, 1963 not been passed, the amount of tax to be discharged shall not exceed the amount of tax assessed and paid for the year of income 1963, if

- (a) such person was in receipt of income for part only of the year of income 1963; or
- (b) such person was in receipt of income for part or the whole of the year of income 1963, but the income

30

- (i) did not include income from such of the sources from which the total income for what would have been the year of assessment 1963, had the said Act not been passed, was derived, as the Commissioner may in case determine; or

- (ii) was income arising, accruing in, derived from or received in Trinidad and Tobago in respect of a business, trade, profession

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or vocation that, in the opinion of the Commissioner, has been voluntarily curtailed or reduced by such person.

In the High Court

6. Sections 23(1) and 24 of the Ordinance, which were repealed by the Act, provided respectively as follows:-

No. 2
Statement
of Claim
5th February
1969

SECTION 23(1):

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"Every company which is incorporated in Trinidad and Tobago, or which though incorporated outside Trinidad and Tobago, is registered under the provisions of section 298 or the Companies Ordinance, shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the company (double taxation relief being left out of account) on the income out of which such dividend is paid:

20

Provided that where tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the Company."

SECTION 24:

30

"Any tax which a company has deducted or is entitled to deduct under the last preceding section from a dividend paid to a shareholder, and any applicable to the share to which any person is entitled in the income of a body of persons assessed under this Ordinance, shall, when such dividend or share is included in the chargeable income of such shareholder or person, be set off for the purpose of collection against the tax charged on that chargeable income."

7. (a) Section 76c of the Ordinance (which was introduced by the Act) provides that:-

40

"Notwithstanding that any assessment has been made upon any person before the Income Tax (Amendment) Act, 1963, was passed in respect of his chargeable income for what would have been the year of assessment 1963, had that Act not been passed, the provisions of this Ordinance shall have effect in

In the High
Court

—
No. 2
Statement
of Claim
5th February
1969

relation to that income and the Commissioner may refund the amount paid, if any, in respect of the tax discharged by this Ordinance, or instead of making a refund, may where the person is liable or about to become liable to make a payment under this Ordinance for the year of income 1963 apply part of that amount to that other liability and refund any balance to such person and notify such person of that action."

(b) Section 46(1) of the Ordinance as amended by section 47 of the Act provides that:- 10

"If it be proved to the satisfaction of the Commissioner that any person for any year of income has paid tax, by deduction or otherwise, in excess of the amount with which is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within six years from the year of income to which the claim relates. The Commissioners shall give a certificate of amount to be repaid and upon the receipt of the certificate the Accountant General shall cause repayment to be made in conformity therewith." 20

8. The plaintiff company says that in the premises it paid in respect of the year 1962 tax to the extent of the said sum of \$16,376.00 in excess of the amount with which it was properly chargeable for the said year and that it is accordingly entitled to have the said sum refunded to it. The plaintiff company, by its duly authorised agent, requested the Board of Inland Revenue to refund to it the said sum of \$16,376.00 but the board has failed and/or refused to do so and maintains that the plaintiff company is not entitled to the refund claimed. 30

And the plaintiff company claims:-

- (i) A declaration that the Board of Inland Revenue is under the obligation to make to the plaintiff company a refund of the said sum of \$16,376.00.
- (ii) Payment of the said sum together with interest thereon at the statutory rate until judgment or repayment. 40
- (iii) Costs.

(iv) Such further and/or other relief as the nature of the case may require.

In the High Court

TAJMOOL HOSEIN
Of Senior Counsel

RALPH ARMORER
Of Junior Counsel

—————
No. 2
Statement
of Claim
5th February
1969

DELIVERED this 5th day of February,
1969, by Messrs. FITZWILLIAM,
STONE & ALCAZAR, of No. 78
Independence Square, Port-of-Spain,
Solicitors for the Plaintiff.

10

FITZWILLIAM, STONE & ALCAZAR
Plaintiff's Solicitors

To: THE CROWN SOLICITOR,
7, St. Vincent Street,
Port-of-Spain,
Solicitor for the Defendant.

In the High Court

No. 3

Defence

No. 3
Defence
6th October
1969

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 2344 of 1968

B E T W E E N

GORDON GRANT AND COMPANY (1965) LIMITED
(In Voluntary Liquidation)

Plaintiff

AND

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Defendant

10

D E F E N C E

1. The Defendant admits the allegations of fact contained in paragraph 1 of the Plaintiff's Statement of Claim herein.

2. The Defendant will contend that the Plaintiff's cause of action is not maintainable in law, in that the procedure as established by the Crown Suits Ordinance, Ch. 5. No. 1 for bringing suits against the Crown had not been complied with, and/or the Crown Liability and Proceedings Act, 1966.

20

3. Alternatively the Plaintiff's alleged causes of action herein are barred by the Limitation of Personal Actions Ordinance, Ch. 5. No. 6.

4. Alternatively the Defendant contends that the Court has no jurisdiction to adjudicate on the Plaintiff's claim which in substance is an Income Tax Appeal and is within the sole jurisdiction and purview of the Income Tax Appeal Board established by virtue of the provisions of the Income Tax Ordinance, Ch. 33. No. 1 to hear and determine all income tax appeals.

30

5. The Defendant will invoke and rely on the provisions of the Public Authorities Protection Ordinance, Ch. 9. No. 4.

6. The Defendant admits so much of paragraph 2 that states "included in the return made by the Plaintiff

company to the Commissioners of Inland Revenue (hereinafter called "the Commissioners") of the Plaintiff company's income for the year 1962 were three dividends which had been paid to the Plaintiff company in 1962 "and" pursuant to section 23 of the Income Tax Ordinance, Ch. 33. No. 1 (hereinafter called "the Ordinance") income tax amounting to \$16,376.00 was deducted from the said dividends by the paying companies" but the Defendant denies that the said three dividends were paid out of profits earned by the respective paying companies prior to the year 1962.

In the High
Court

No. 3
Defence
6th October
1969

7. The Defendant admits paragraphs 3, 4 and 5 of the Plaintiff's Statement of Claim.

8. The Defendant admits paragraph 6 of the Plaintiff's Statement of Claim but says that section 24A of the Income Tax Ordinance rendered section 24, as quoted in the Plaintiff's Statement of Claim, inoperative in cases where tax on non-emoluments income for the year 1962 was discharged by section 76A of the Income Tax Ordinance.

9. The Defendant admits paragraph 7 of the Plaintiff's Statement of Claim but contends that no sum is due or payable by the Defendant to the Plaintiff as alleged in the Statement of Claim or at all.

10. The Defendant denies that the sum of \$16,376.00 was in excess of the amount with which the Plaintiff company was properly chargeable for the year 1962 and maintains that the Plaintiff company is not entitled to the refund claimed.

11. Save as hereinbefore expressly admitted the Defendant denies each and every allegation of fact in the Statement of Claim as if the same were set forth herein seriatim and specifically traversed.

RANDOLPH KONG
Of Counsel

Defence of the above-named Defendant delivered by his Solicitor the Crown Solicitor of No. 7 St. Vincent Street, Port-of-Spain, this 6th day of October, 1969.

E. LAI FOOK
for Crown Solicitor,
Defendant's Solicitor

We hereby accept delivery of the Defence herein although the time for so doing elapsed.

Plaintiff's Solicitors

In the High
Court

No. 4

Reply

No. 4
Reply
16th December
1969

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 2344 of 1968

B E T W E E N

GORDON GRANT & COMPANY (1965) LIMITED
(In Voluntary Liquidation)

Plaintiff

AND

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Defendant

10

R E P L Y

1. Save for admissions therein contained, the Plaintiff joins issue with the defendant on his defence.

2. The Plaintiff will contend that the matters alleged in paragraphs 2, 3, 4, 5 and 8 of the Defence are no answer in law to the Plaintiff's claim herein.

3. Pursuant to the provisions of section 46 of the Income Tax Ordinance the Plaintiff by its auditors by letter dated the 28th day of April, 1967, claimed repayment of the sum which is the subject matter of the claim herein.

20

RALPH ARMORER
Of Counsel

Delivered this 16th day of December, 1969, by
Messrs. Fitzwilliam, Stone & Alcazar, of 78, Independence
Square, Port-of-Spain, Solicitors for the Plaintiff.

FITZWILLIAM, STONE & ALCAZAR
Plaintiff's Solicitors

To: THE CROWN SOLICITOR,
7, St. Vincent Street,
Port-of-Spain.
Solicitor for the defendant.

30

No. 5

Proceedings

In the High Court

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 2344 of 1968

No. 5
Proceedings
18th February
1974

B E T W E E N

GORDON GRANT & COMPANY (1965) LIMITED
(In Voluntary Liquidation)

Plaintiff

AND

10 THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Defendant

Before the Honourable Mr. JUSTICE JOHN
BRAITHWAITE HOSEIN, Q.C. ARMORER
AND MARTINEAU for Plaintiff.
CRANE, Q.C. AND WONG for Defendant

SUBMISSIONS

By consent documents put in and marked A.1 - A.13.
Defendant not pursuing point in limine as appear
in defence.

20 Armorer opens for plaintiff i.e. 2-5 inclusive of
the defence \$16,375.00.

Refers to A.8 and A.9 and A.10 and A.11.

1962 income tax returns - dividends were included -
reference to section 23 and reads -

Companies did deduct \$16,376.00.

1963 Act - New Section 44 introduced to ordinance
76(a)(1).

Tax which would have been payable - 1963.

30 See Folio 4 - Tax discharged under 76(a) \$124,252
and (Nil) No tax payable.

N.B.S.46(1) most important to plaintiff.

N.B. paragraph 8.

Defence - admit deduction of \$16,376.00.

Defence will admit that dividends paid.

Issue in S.10.

M . Hosein states that he is not calling any evidence
in this matter.

In the High
Court

CASE FOR THE PLAINTIFF CLOSED

Defendant calling no evidence either.

No. 5
Proceedings
18th February
1974

HOSEIN addresses:

Facts not in dispute. Plaintiff submitted return for 1962 - included 3 dividends referred to A.8, A.9, A.10, A.11 and 12. Total of tax deduction is subject matter of claim. Dividends paid out of income of Company for year 1961 and not 1962. Income Tax (A) Act - 25th June, 1963 (date of assessment).

Formal assessment "nil" - Tax discharged under 76A - but for discharge - set off amount claimed in action. Entitled to credit to amount from dividends paid by the Company. Company's position that by reason of discharge of liability entitled to be refunded since dividends paid out of profits. 10

Scheme to taxation changed. Finance Act, 1966. s. 45 introduced Corporation Tax.

1. Company paying dividends to shareholder, entitled to deduct from dividend tax payable by Company on income out of which dividend paid. 20

2. Dividend deemed to be paid to shareholder not actual amount received by shareholder but gross amount.

Effect of 23A.

Practice - Amount received by taxpayer not the net amount but the gross amount.

Entitled to set off on that tax chargeable amount deducted by paying company - prior to payment S.24.

New 24A introduced by Act.

Income Tax return for 1962-1963. Act was in force. (Given retrospective effect). 30

Gross amount - deemed to have been received.

(Return submitted 16th April, 1966).

Demand for refund

Submits that is effect of those sections.

Case Law - although Company not agent of shareholder when paying deduction or tax - to extent of deduction shareholder pays tax through Company and entitled as against the Revenue not the Company.

In the High Court

To that extent credit as against revenue, shareholder must be considered to have paid tax and it follows where shareholder's liability is nil or less than amount of credit he is entitled to refund as against the revenue. Next submission, liability being nil by 76A, (See Assessment Notice) Company entitled to a refund of amount deducted representing such credit. (Unless Company's right destroyed).

No. 5
Proceedings
18th February
1974

10

S. 76C of Act deals expressly with situation reduction of tax.

CASES:

Bradbury v English Sewing Cotton Company [1923]
A.C. 771, 766 [Lord Renbury] (S.40 of Income Tax Act, 1842).

Lord Phillimore at top of p.771.

No agency involved:

20

1931 (2 K.B. p.495).
Lord Hamworth at p.517.
Lord Justice Lawrence p.519.
Lord Justice Romer p. 521.

Set - off - Concept of credit has developed. Utilised when taxpayer assessed. Refund of credit on excess of liability.

Hughes v Federal Commissioner of Taxation
1957 - 1958 - 98 C.L.R. p.345.

30

Credit not against Company but against tax authority.
Refund of excess.
12 Australasian Tax Decision at p.136.

Bigger Ltd. v Commissioner of Income Tax [1962]
3 ALL E.R. p.295

S.46 - Company paid tax to extent of deductions. Fact of deductions payment of tax by shareholder - existence of credit in hand of revenue similar to payment.

Amount chargeable is nil. Taxpayer entitled to be refunded his claim.

In the High Court

Adjourned: 19/2/74,
Resumed: 19/2/74:

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No. 5
Proceedings
19th February
1974

CRANE: Para 8 of Statement of Claim and reads.

Paid tax for 1962. - a conclusion and not a fact - "and it is etc." - another conclusion.

One to determine arises out of discharge of tax and not emoluments (charged to tax for what would have been year of assessment 1963) - Law 1963 Act not been passed.

Refers to 76A.

Basic issues two-fold -

10

- (1) Did plaintiff pay Income Tax when Company deducted tax from dividends paid in 1963. Considerations of principles of taxation of Company profits under law as then stood.
- (2) Assuming that plaintiff is treated as having paid tax by deduction at source under charge S.23. Was plaintiff discharged from tax on that income in such a manner and intent as did entitle him to set off ordinarily provided for by S.24 as well as to any refund authorised by 24 and 46?

20

If answers both in negative plaintiff's case must fail.

Principles of Income Tax (underlying)
Income Tax - Section 6 - charge, levy to be collected.
Four states of Income Tax.

- (1) Charge to tax;
- (2) Assessment of tax;
- (3) Collection of tax;
- (4) Recovery of tax;

No tax without charge - deduction at source or by assessment (or otherwise).

30

Section 32(1) genuine case of deduction at source as Ordinance originally Tax on dividends.

Charge by assessment = ascertaining chargeable income of taxpayer - See section 2 = to charge income of any person generally = from source specified in section 5.

Tax charged before 1963 on immediate year's income - see original section 6.

In the High Court

Phillips v Inland Revenue Commission W.I.R. Vol 5 - 1962 - p. 304.

What are charging provisions in the Ordinance?

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No. 5
Proceedings
19th February
1974

Patrick Reynolds v I.T.C. (1959) W.I.R. Vol. 2.
Luckoo C.J. look at

Hallaby v Assessing Office, Lydda District - Civil Appeal No. 345 of 1943 (Palestine).

10 Five and six are only charging provisions other than s.32 at that time. Act of 1963 changed basis of assessment from immediately preceding year basis to current year basis.

"Year of income" = years of assessment.

1st January each year.

Telescopes the two years - one of main pillars of Act of 1963 - use preceding year as a measure (Section 38A).

38A = "non-emolument income."

20 76(1) had introduced P.A.Y.E. - had also discharged tax in year 1957.

76A discharged tax on non-emolument income. 1963 is a phantom year.

(1) Can he be regarded as having paid tax?

Company have principles approach - Company distinct from its shareholders s.23 - Charge on profits of company. (s.24 and s.46) see 23(1).

Because of proviso, shareholder is taxable separately from the Company.

30 U.K. line of authorities C.I.R. v BLOTT 1921 A.C. 171.

(Distribution of dividends in form of shares).

Gimson v I.R.C. 1930 2 K.B. 246.

Dividend paid partly out of capital.

In the High Court

Neuman v I.R.C. [1934] A.C. 215.

Lord Wright at p.235.

No. 5
Proceedings
19th February
1974

Bull v I.R.C. [1940] A.C. 51 22 T.C. 603.

In Trinidad and Tobago - taxpayer taxed separately in Trinidad and Tobago.

Bigber Ltd. v C.I.R. [1963] 1 W.I.R. 897.

Not taxable on dividend as a separate item but only when included in chargeable income.

Set-off under .24 not made only against dividends. Tax not imposed by s.23 as is imposed by s.32. Taxpayer did not pay tax when company deducted dividends under s.23.

10

s. 24 applies only where there is a charge to tax. No charge to tax in year 1963.

"Tax charged" - there must be a charge (in the year of assessment) to tax.(must not be a discharge).

Charge was discharged by 76A.

2nd set of words "Purposes of collection - nothing to collect - nil charge. s.46 requires tax to be paid by plaintiff as well as in excess of amount with which tax properly chargeable.

20

\$16,000 is not tax.

Huges v Federal Commissioner of Tax [EFLS] 98
Commonwealth L.R.

"tax" = companies tax and not tax deducted for/on account of shareholder. In 46 not shareholders tax.

Has he paid tax. (the shareholder).

Company thereby entitled to deduct.

at p.355 Dickson C.J.

Federal Commissioner of Tax v Brohier [1959] 72
Australian Law Journal.

30

Section 76C (Discharge of tax - 1963).

Section 76A - discharge on non-emolument income only - change of basis of assessment - can only operate on dividends included in one's chargeable income.

(Could operate on S.32). Therefore must be a process of assessment.

In the High Court

Adjourned 20/2/74:

Resumed 20th February, 1974:

Guyana Industrial and Commercial Investments Ltd. and I.R.C. [1971] 1 W.L.R. p.288 at p.p. 291 and 292.

No. 5
Proceedings
19th February
1974

Authorities just enunciate principles - shareholder taxpayer taxed separate to company.

20th February
1974

Mr. Martineau:

10 Plaintiff did not pay tax under S.23.

Plaintiff Company is not entitled to refund under S.24 and S.46.

- (a) Company does not pay tax as agent of shareholder;
- (b) Shareholder is taxable separately;
- (c) Taxpayer not taxable under Ordinance on dividends separately;
- (d) S.23 is not a charging section.

No quarrel with these propositions.

20 Plaintiff Company paid tax through paying company to the extent of deduction made by paying company under S.23 - Tax credit in favour of plaintiff as against the defendant - Cases only explainable if tax credit in favour of the shareholder as against the Revenue.

No attempt to distinguish or explain these cases.

By virtue of section 5(1)(h) - chargeable income.

There was an assessment.

Set-off is set-off against tax charged.

30 S.24 is for collection only and in this case no collection. Tax was discharged. Dividend included in charged tax. Entitled by implication to a refund.

Plaintiff entitled to refund where tax payable is nil.

Analogy in civil action.

In the High
Court

(See Counterclaim for difference).

For purposes of collection must include purposes of
refund where refund is necessitated by an excess.

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No. 5
Proceedings
20th February
1974

Defendant says - S.46 was not applicable. Plaintiff
was not charged to tax.

Tax paid must be in excess of amount charged.

Plaintiff paid tax to extent of deduction.

Does not matter if deduction notional

Note words "or otherwise" in S.46(1).

No quarrel with Dickson's dictum.

10

S. 46 (Referred to).

76A Discharge of tax for 1962. Otiose if no charge to
tax. If no charge to tax - no tax to discharge.

1963 Act was amending Act and pre-1963 to have effect in
so far as not expressly excluded by 1963 Act.

Section 5 not so excluded.

Definition covers former year of assessment, 1962.

See 76C does not deal only where assessment has been made.

"Notwithstanding" means "even though"/"in spite of the fact
that".

20

Palestine Income Law at p.260 and following and in
particular p.261.

Judgment

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 2344 of 1968

No. 6
Judgment
19th April
1974

B E T W E E N

GORDON GRANT & CO. (1965) LIMITED
(In Voluntary Liquidation)

Plaintiff

AND

10 THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Defendant

Before the Honourable Mr. JUSTICE JOHN A. BRAITHWAITE
TAJMOOL HOSEIN, Q.C., and with him ARMORER and
MARTINEAU for the plaintiff.
RICHARD CRANE, Q.C., and with him KONG, MILLER and
Mrs. MARJORIE DES VIGNES for the defendant.

JUDGMENT

20 This is an action in which the plaintiff is claiming
a declaration that the Board of Inland Revenue is, by
virtue of the provisions of the Income Tax Ordinance,
Ch. 33. No. 1, under an obligation to make a refund of
tax amounting to \$16,376.00 (together with interest thereon
at the statutory rate) deducted from dividends paid to the
plaintiff in 1962 out of profits earned by the paying
companies prior to the year 1962. The plaintiff is also
claiming payment of the said sum with interest thereon,
costs and such further and/or other relief as the nature
of the case may require.

30 The facts giving rise to this action are not in
dispute. Indeed senior counsel on both sides called no
evidence and agreed that a bundle of documents which was
put in by consent and marked "A" contained the factual
position in the matter.

These documents, as I understand them, seem to reveal
that the plaintiff held shares in at least two companies,
namely the Bermudez Biscuit Co. Ltd. and Gordon Grant

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& Co. (Tobago) Ltd. On the 16th of April, 1966, the plaintiff's chartered accountants, Messrs. Fitzpatrick, Graham & Co. wrote a letter to the Commissioner of Inland Revenue, the relevant portion of which reads as follows:-

"Dear Sir,

GORDON GRANT & CO. LTD.
INCOME TAX - INCOME OF 1962

The above-named Company has not yet been assessed on its chargeable income arising in the year 1962 and consequently the discharge of tax thereon, provided by Section 76A of the Ordinance, has not been effected. 10

We now formally request that you make the assessment on this client and effect the discharge - as has been done to our knowledge with a considerable number of other taxpayers in relation to their 1962 income.

We formally claim repayment of tax under Section 46(1) in the amount of \$16,376.00, this being tax deducted from dividends received by Gordon Grant & Co. Ltd. in 1962, paid out of the 1961 income of various companies, the details of which are shown in the annexed statements." 20

To this letter the Commissioner of Inland Revenue replied in these terms on the 7th of June, 1966:-

"Dear Sirs,

GORDON GRANT & CO. LTD.
INCOME OF 1962 - REF. No. 1/464

I refer to your letter of 16th April, 1966, and advise that tax on the income of 1962 has been discharged. However, under the Income Tax (Amendment) Act, 1963, in Section 24, relief is available for the year of income 1962 in respect of tax deducted at source from dividends." 30

The plaintiff's accountants by letter dated the 17th of June, 1966, noted that tax on the income of 1962 had been discharged and requested a notice of assessment to that effect. This notice was subsequently supplied and shows at the end thereof the following:-

"Total Tax on \$310,630 chargeable income	\$124,252.00
Tax discharged under section 76A	\$124,252.00
Payment of Tax	"Nil"

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This correspondence was contained by the plaintiff's accountants by a letter dated the 20th April, 1967, addressed to the Chairman of the Board of Inland Revenue, and I quote the pertinent paragraphs thereof:-

"Dear Sirs,

10

GORDON GRANT & CO. LTD.

YEAR OF INCOME 1962 - FILE No. 1/1464

Included in the Company's income for the year in question (i.e. 1962) were a number of dividends (details were furnished to you by us by our letter of April 16, 1966) paid by various local companies during the year out of their profits for previous years and from which tax had been deducted at the appropriate rate and accounted to your office in accordance with the requirement of the Income Tax Ordinance.

20

Gordon Grant & Company Limited are advised that, in view of the nil assessment for the year 1962, they are entitled to a refund of the said tax (amounting to the sum of T.T. \$16,376.00) under the provisions of Section 46 of the Ordinance, such provisions being applicable (so they are advised) to the income of the year 1962 by virtue of section 76C."

30

The embryo of the issue which I will eventually have to resolve was conceived in the above-quoted letter and the full development of the issue was effected by the Commissioner of Inland Revenue reply which was received by the plaintiff's accountants on the 3rd of October, 1967. This is how that reply read:-

"Dear Sirs,

GORDON GRANT & CO. LTD.

YEAR OF INCOME 1962 - FILE NO. 1/1464

I refer to your letter dated 20th April, 1967, in connection with the above and regret the delay in replying.

40

I attached a copy of my letter dated 7th June,

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1966, and again confirm that the provisions of the Income Tax Ordinance, Ch. 33. No. 1, dealing with the repayment of tax deducted from dividends were made inapplicable to dividends declared in 1962 by the operation of the Income Tax (Amendment) Act, 1963."

The issue, the way I see it, has now properly emerged and I put it in question from thus:-

"Was the Commissioner of Inland Revenue required to refund to a taxpayer in a year of income in which the tax chargeable to income (other than tax on emoluments within the meaning of section 53c) was by law discharged tax deducted at source and paid by the paying companies to the Commissioner of Inland Revenue?"

10

In order to answer this question the most convenient approach would seem to be to examine and attempt to construe the following section of the Income Tax Ordinance, Ch. 33, No. 1, as those sections stood in the year 1964:-

- (a) sections 5 and 6;
- (b) section 28(1);
- (c) sections 24 and 24A(1);
- (d) section 46;
- (e) section 76A; and
- (f) section 76C.

20

Section 5 relates to the charge of income tax. I shall not quote the whole section but shall restrict the quotation to what is relevant to the instant case:

"Charge of Income tax specified

5(1) Income Tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates hereafter for each year of income upon income of any person accruing in or derived from Trinidad and Tobago or elsewhere, and whether received in Trinidad and Tobago or not in respect of :

30

- (a)
- (b)
- (c)
- (d) dividends, interest, or discounts;

This then in 1964 was the section which was responsible for the imposition of income tax upon income of any person in respect of dividends declared by a company or a body of persons.

40

Section 6 relates to the basis of assessment and reads thus:-

In the High Court

"Basis of assessment 6. Tax shall be charged for each year of income upon the chargeable income of any person for that year".

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As the law stood in 1964 this was the basis of assessment, that is to say, an annual assessment on the chargeable income of every person, which term included corporations sole and a body of persons. (See definition in section 2). Perhaps this may be an appropriate place to set out the definition of "chargeable income" - an expression which will occur from time to time in this judgment:

"Chargeable income" means the aggregate amount of the income of any person from the sources specified in section 5 remaining after allowing the appropriate deductions and exemptions under this Ordinance."

I turn next to the provisions of Section 23(1) of the Income Tax Ordinance as amended:-

- (a) by the Income Tax (Amendment) Ordinance, 1956, No. 34/1956;
- (b) by the Income Tax (Amendment) Act, 1963, Act No. 16/1963.

This Subsection reads as follows:-

"23(1) Every company which is incorporated in Trinidad and Tobago or which, though incorporated outside Trinidad and Tobago, is registered under the provisions of section 298 of the Companies Ordinance, shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the Company (double taxation relief being left out of account) on the income out of which such dividend is paid:

Provided that where tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company."

The interpretation I put on this subsection is that it gives a company registered in Trinidad and Tobago the right

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to deduct, if it so desires and, if indeed the shareholders so desire, from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the Company on the income out of which such income is paid. The point I wish to make here is that the words "shall be entitled" are merely permissive words and not obligatory words and do not put the Company under any duty or obligation to deduct tax on declared dividends, that is to say, the words in ordinary language seems to me to mean, "If the company wants to, and the shareholders agree, it may deduct etc. etc." A lot appears to me to depend upon the constituting documents of a particular company. Company A's Articles of Association may provide for the Company deducting tax from its shareholders at source. Company B's may permit the dividends to be paid untaxed (so to speak) into the hands of the shareholders who would in their turn have to account personally to the Board of Inland Revenue for those dividends in their annual returns of their income.

10

What seems to have happened in this case is that the paying Companies deducted at source the sum of \$16,376.00 being the tax payable on the dividends declared in favour of the plaintiff to the Board of Inland Revenue. The arrangement between the paying companies and the plaintiff apparently was that the paying companies should deduct tax on dividends declared in favour of the plaintiff at source and pay over to the plaintiff the remaining portion of the declared dividend. The arrangement could very well have been the other way around, if my interpretation of the words "shall be entitled" is correct. By that I mean, the paying companies could well have paid the entire dividend declared to the plaintiff who would have had to return as part of its income for the year of income 1962, the income derived from these dividends. In this latter case, the \$16,376.00 which was paid by the paying companies, or perhaps more, perhaps less, would have had to be paid by the plaintiff. That is to say, if the year of income 1962 were a normal year of income.

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30

The position, as I see it, of the paying companies when they pay the tax of shareholders on dividends declared is that, if I may use a colloquial phrase, of a messenger-boy and not of an agent. The case of *Hughes & The Federal Commissioner of Taxation* reported at C.L.R. [1957-58] Vol. 98 at p.345 et seq seems to make this clear. It was held in that case that the sums deducted were calculated with reference to the Companies' tax and were so characterised, and that they not paid or payable for or on account of the taxpayers by the companies. As I have put it,

40

these taxes were merely passed on to the Inland Revenue Authorities as part and parcel of the arrangements made between the paying companies and the payees, (in this case the plaintiff).

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I pass on briefly to section 24 of the Ordinance. This section reads as follows:-

"24. Any tax which a company has deducted or is entitled to deduct under the last preceding section (section 23) from a dividend paid to a shareholder, and any tax applicable to the share to which any person is entitled in the income of a body of persons assessed under this Ordinance, shall, when such dividend or share is included in the chargeable income of such shareholder or person, be set off for the purposes of collection on that chargeable income."

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As I understand this section, when tax is under section 23 deducted or deductible from a dividend payable to a shareholder, if the dividend or share is included in its entirety in the chargeable income (for definition see above) then for the purposes of collection the deducted or deductible tax shall be set off against the tax charged on that chargeable income. To quote an example, if A company deducts or is entitled to deduct the sum of \$100.00 as tax on a dividend to which B is entitled and B includes the whole dividend of which the \$100.00 forms part, in his chargeable income, then he is entitled for the purposes of the collection of tax on his chargeable income to a set-off of \$100.00. I have set out the above provisions and my interpretation thereof in order to show what I conceive to be the law relating to deduction at source by a company of tax on dividends declared in favour of shareholders before the introduction of Section 76A(1).

This is how that section reads:-

"Discharge for 1962 of tax	76A (1) Notwithstanding anything contained in this Ordinance, other than the provisions of Section 76, but subject to this section, income tax on all income (other than income tax on all emoluments within the meaning of section 53c), that would have been chargeable to tax for what would have been the year of assessment, 1963, had the Income Tax (Amendment) Act, 1963 not been passed, is hereby discharged.
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(2) Where the tax payable by any person for the year of income 1963 is less than the tax that would have been payable for what would have been the year of assessment 1963 had the Income Tax (Amendment) Act, 1963 not been passed, the amount of tax to be discharged shall not exceed the amount of tax assessed and paid for the year of income 1963, if -

10

- (a) such person was in receipt of income for part only of the year of income 1963; or
- (b) such person was in receipt of income for part or the whole of the year of income 1963, but the income -

- (i) did not include income from such of the sources from which the total income for what would have been the year of assessment 1963, had the said Act not been passed, was derived, as the Board may in any case determine; or

20

- (ii) was income arising accruing in, derived from or received in Trinidad and Tobago in respect of a business, trade, profession or vocation that, in the opinion of the Board, has been voluntarily curtailed or reduced by such person."

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To my way of thinking, this section suspended so far as the year of assessment 1963, that is to say the income year 1962, was concerned, the collection of tax on dividends derived from profits. In the words of the section such tax was discharged.

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In this case, the plaintiff's tax on its own income for the income year 1962 was discharged in accordance with the provisions of Section 76A (1) (See letter of the Commissioner of Inland Revenue dated the 7th of June, 1966 and document No. 4)

What the plaintiff is contending is that it should be refunded that portion of its tax which was deducted at source by the paying companies and which amounted to \$16,376.00 and for which it was not given any credit in any way. This sum the plaintiff maintains represents an excess of tax and is therefore subject to be dealt with under Section 46 of the Ordinance which reads as follows:-

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10 "Circumstances 46(1) If it be proved to the
under which satisfaction of the Commissioner
replayment may that any person for any year of
be made income has paid tax, by deduction
or otherwise, in excess of the
amount with which he is properly
chargeable, such person shall be
entitled to have the amount so paid
in excess refunded. Every claim
for repayment under this section
shall be made within six years
20 from the end of the year income to
which the claim relates. The
Commissioner shall give a certificate
of the amount to be repaid and upon
the receipt of the certificate the
Accountant General shall cause
repayment to be made in conformity
therewith.

30 (1A) The extension of the time within
which such claim for repayment shall
be made has effect for the former
years of assessment 1961 and 1962,
and subsequent years of income.

40 (2) Except as regards sums
repayable on an objection or appeal,
no repayment shall be made to any
person in respect of any year of
income as regards which that person
has failed or neglected to deliver
a return or has been assessed in a
sum in excess of the amount
contained in his return, provided
that he has received notice of the
assessment made upon him for that
year, unless it is proved to the
satisfaction of the Commissioner
that such failure or neglect to
deliver a true and correct return
did not proceed from any fraud or
wilful act or omission on the part
of that person."

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1974

Great stress was laid by counsel for the plaintiff on the words "has paid tax by deduction or otherwise" occurring in subsection (1) of the section and counsel's main argument on this point was that however it was done, whether by deduction or by any other method, the Board of Inland Revenue received \$16,376.00 in tax in respect of dividends declared in favour of the plaintiff from the paying companies which it should not have received in respect of the year of income 1962 or what is the same thing, the year of assessment, 1963.

Counsel for the plaintiff also argued that this being so, the Board of Inland Revenue received \$16,376.00 in excess of what it should have received which, with respect to the particular year of income, should have been nothing - as it was a year in which income tax on all income that would have been chargeable to tax was discharged. 10

On the other hand, counsel for the defendant described the year of assessment as he put it "a phantom year" (a year that never really was). Consequently section 46(1) had no application especially in view of the fact that section 23(1) was not what he referred to as a charging section. Counsel for the defendant referred to section 24A of the Ordinance and stated that section 24A rendered section 24 inoperative where tax on non-emolument income for the year of income 1962 was discharged by section 76A of the Income Tax Ordinance. 20

Both counsel quoted a number of authorities. I have set out these authorities in a Schedule to this Judgment. With great respect, I found none of the authorities quoted, except the one to which I referred earlier in this judgment, even nearly on all fours with the present case, which may well be termed as unique. 30

First I will consider whether the provisions of section 24A(1) are applicable to the facts of this matter. Section 24A(1) reads thus:-

"No set-off tax 24A(1) Notwithstanding section 24,

- (a) where a dividend is paid to a shareholder, and
- (b) where a share to which a person is entitled in the income of a body of persons assessed under this Ordinance is paid to that person out of the income of a company or other body of persons 40

that has been discharged of tax by section 76A, such shareholder or person is not entitled when such dividend or share is included in the chargeable income of such shareholder to set off for the purposes of collection against the tax charged on the tax charged on that chargeable income or to be refunded by the Commissioner, any tax which the company has deducted or is entitled to deduct under section 23 from such dividend and any tax applicable to the share to which such person is entitled as aforesaid."

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1974

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Before I deal with the facts, may I say that this subsection clearly contemplates circumstances in which a set-off against tax and a refund by the Commissioner if excess tax may exist, that is to say, the circumstances explicitly expressed by sections 24 and 46(1) of the Ordinance. Be that as it may, although there is no specific statement showing that the paying companies had been discharged of tax under section 76A, it seems reasonable to assume that they had not been so discharged. I say so for the following reasons:-

30

- (a) In the last paragraph of the letter dated the 16th of April, 1966, written to the Commissioner by the plaintiff's accountants we find this -

"We formally claim repayment of tax under section 46(1) in the amount of \$16,376.00 this being tax deducted from dividends received by Gordon Grant & Co. Ltd., in 1962, paid out of the 1961 income of various companies, the details of which are shown in the annexed statements."

40

This was the answer to that letter by the Commissioner of Inland Revenue -

"Dear Sirs,

GORDON GRANT & CO. LTD.

INCOME OF 1962 - REF. No. 1/464

I refer to your letter of 16th April, 1966 and

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1974

advise that tax on the income of 1962 has been discharged. However, under the Income Tax (Amendment) Act, 1963, in (sic) section 24 relief is available for the year of income 1962 in respect of tax deducted at source from dividends.

Surely, had the tax paid by the paying companies been discharged under section 76A the Commissioner would have pointed that fact out to the plaintiff.

(b) If the tax had been discharged under section 76A, the least one could expect is that that fact would be specifically pleaded in the defendant's defence." 10

I am therefore of the opinion that section 24A is inapplicable to the instant case and that if this opinion is correct the tax paid to the Inland Revenue Authorities by the paying companies was not discharged under section 76A and still resides with that authority.

I have no doubt that by deduction at source the plaintiff paid to the Commissioner of Inland Revenue the sum of \$16,376.00. This amount must have been in excess of what was properly chargeable because in the year of income 1962 all income tax on income was discharged. With section 24A not applying in the matter, the only possible conclusion to which I can come is that section 46(1) applies and that the plaintiff is entitled to have the amount of \$16,376.00 repaid to him by the Board of Inland Revenue. 20

I am somewhat fortified in this view by the provisions of section 76C which deals with assessments already made for 1963 before the Income Tax (Amendment) Act, 1963 was passed. This is how that section reads:- 30

"Assessments already made for 1963 76C. Notwithstanding that any assessment has been made upon any person before the Income Tax (Amendment) Act, 1963, was passed, in respect of his chargeable income for what would have been the year of assessment 1963, had that Act not been passed, the provisions of this Ordinance shall have effect in relation to that income and the Commissioner may refund the amount paid, if any, in respect of the tax discharged by this Ordinance, or instead of making a refund may, where 40

the person is liable or about to become liable to make a payment under this Ordinance for the year of income 1963 apply any part of that amount to that other liability and refund any balance to such person and notify such person of that action."

In the High
Court

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1974

10 What this section appears to me to do is to put assessments which were made before the 1963 Act was passed in respect of chargeable Income for what would have been the year of assessment 1963, subject to the same provisions of the Income Tax Ordinance as assessments made after that Act was passed as happened in the instant case. And the section goes on to explain what these provisions are:

First the provision which enables the Commissioner to refund the amount paid in respect of the tax discharged by the Ordinance, that is to say section 46(1).

20 Second the provision which enables the Commissioner (instead of making a refund) to apply any part of that amount to other liability and refund any balance that is to say section 24.

There was no tax liability on the plaintiff for the income year 1962 (see document No. 4). So, as I said above, the only possible section which could apply in this case is section 46(1).

This is the Court's order:

- 30 (a) It is declared that the Board of Inland Revenue shall repay to the plaintiff the sum of \$16,376.00 with interest thereon at the rate of 6 per cent per annum from the 20th of April, 1967;
- (b) That the defendant shall pay to the plaintiff the costs of this action fit for two counsel;
- (c) That there shall be a stay of execution for a period of twenty-eight (28) days. (To continue in the event of an appeal).

Dated the 19th day of April, 1974.

JOHN A BRAITHWAITE,
Judge

In the High
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THE SCHEDULE

—
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19th April
1974

1. Newman v I.R.C. [1934 A.C. 215] 18 T.C. 332,
page 368.
2. Gimson v I.R.C. [1930] 2 K.B. 246, 99 L.J.K.B.143
L.T. 704; 15 T.C. 595.
3. Cull v I.R.C. [1940] A.C. 51; 22 T.C. 603, page 636.
4. I.R.C. v Blott [1921] 2 A.C. 171; 8 T.C. 101.
5. Bicker Ltd. (in Voluntary Liquidation) v C.I.R.
[1963] 1 W.L.R. 897; 106 S.J. 529 P.C.
6. Phillips v I.R.C. [1963] W.I.R. Vol. 5 Part 3, page
304 (B.G.) 10
7. Halaby v Assessing Officer, Lyddia District, Civil
Appeal No. 345 of 1943 (Palestine).
8. Fry v Burma Corp. [1930] 1 K.B. 249.
9. Hughes v Federal Commissioners of Tax [1957] 98
Commonwealth L.R.
10. Federal Commissioners of Tax v Brohier [1959]
12 Aust. Law Journal.
11. Federal Commissioners of Tax v Brohier [1958]
14 A.T.D.
12. Patrick Reynolds v I.R.C. [1965] W.I.R. Vol. 7,
page 154. 20
13. Re Kelshall [1940] 443 of 1939 (T) (unreported).

ORDER

TRINIDAD AND TOBAGO

No. 2344 of 1968

No. 7
Order
19th April
1974

IN THE HIGH COURT OF JUSTICE

B E T W E E N

GORDON GRANT & COMPANY (1965) LIMITED
(In Voluntary Liquidation)

Plaintiff

AND

10 THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Defendant

Dated and Entered the 19th day of April, 1974 before
The Honourable Mr. JUSTICE BRAITHWAITE.

This action having been tried on the 18th, 19th and
20th days of February, 1974 and the Judge, having heard
Counsel for the Plaintiff and for the Defendant, ordered
that Judgment be entered for the Plaintiff.

20 IT IS THIS DAY ADJUDGED that the Board of Inland
Revenue do pay to the Plaintiff the sum of Sixteen
thousand, three hundred and seventy six dollars (\$16,376.00)
and interest at the rate of 6 per cent per annum from the
20th day of April, 1967.

AND IT IS FURTHER ORDERED that the Defendant do pay
the cost on two (2) counts and that there be a Stay of
Execution for a period of twenty-eight (28) days to
continue in the event of an appeal.

Registrar

In the Court
of Appeal

No. 8

Notice and Grounds of Appeal

No. 8
Notice and
Grounds
of Appeal
24th May 1974

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

NOTICE OF APPEAL

No. 35 of 1974.

B E T W E E N

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Defendant/Appellant

AND

10

GORDON GRANT AND COMPANY (1965) LIMITED
(In Voluntary Liquidation)

Plaintiff/Respondent

TAKE NOTICE that the Defendant/Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court sitting in Port-of-Spain contained in the judgment of the Honourable Justice Braithwaite dated the 19th day of April, 1974 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

20

And the Appellant further states that the names and addresses including his own of the person directly affected by the appeal are those set out in paragraph 5.

- 2. The whole decision.
- 3. The Grounds of Appeal

(1) That the learned Judge misconstrued the provisions of the Income Tax Ordinance, Ch. 33. No. 1, (hereinafter called "the Ordinance"), when he held -

- (a) that a shareholder pays income tax when the company paying a dividend deducts tax therefrom;
- (b) that the scheme of taxation of company profits provided for inter alia by sections 23, 24 and 46 of the Ordinance depended upon the

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memorandum of association of the particular company paying the dividend, in that if thereby authorised it would pay after deducting tax, in which case sections 24 and 46 would have effect or if thereby prohibited it would pay the dividend "tax free", in which case the Revenue would look to the shareholder for the tax; and

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of Appeal

—
No. 8

Notice and
Grounds of
Appeal
24th May 1974

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- (c) that the company deducted at source the sum of \$16,376 "being the tax payable on the dividends declared in favour of the plaintiff to the Board of Inland Revenue".

20

(2) That the learned Judge failed to consider or to consider adequately the question whether, on the assumption that the plaintiff is to be treated as if he had paid the tax by deduction at source, was the plaintiff nevertheless discharged from tax on such income in such a manner and with such an intent as to disentitle him to the set off ordinarily provided for by section 24 and to any refund authorised thereby and by section 46.

(3) That the learned judge misconstrued sections 24 and 46 when he failed to hold that for the sections to apply to the plaintiff's case the plaintiff must first have been charged to tax and not (as it was) discharged of tax by section 76A of the Ordinance for the year in question.

30

(4) That the learned Judge erred when he held that he was fortified in his opinion that the plaintiff was entitled to a refund of tax paid by deduction at source from his dividends by section 76C of the Ordinance, in that he misconstrued the section as relating to the plaintiff's case whereas the section relates to the transitional case of tax paid on assessments made before 1963 for what would have been the year of assessment 1963 had the Income Tax (Amendment) Act, 1963 not been passed and not by deduction at source as was the plaintiff's case.

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4. The relief sought from the Court of Appeal is that the judgment of the learned Judge be set aside and that costs of this Appeal and the Court below be taxed and paid by the plaintiff/Respondent and/or such further or other relief as to the Court may seem fit.

5. Persons directly affected by the Appeal :-

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of Appeal

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Notice and
Grounds of
Appeal
24th May 1974

Names	Addresses
(1) The Attorney General of Trinidad and Tobago	Red House, Port-of-Spain, Trinidad.
(2) Gordon, Grant & Company (1965) Limited (In Voluntary Liquidation)	10, St. Vincent Street, Port-of-Spain, Trinidad

This Appeal was filed by the Chief State Solicitor
of No. 7 St. Vincent Street, Port-of-Spain, Solicitors
for the Defendant/Appellant.

10

Dated this 24th day of May, 1974.

SAHADEO TOOLSIE
for Chief State Solicitor,
Solicitors for the Defendant/Appellant

To: THE REGISTRAR,
Court of Appeal

AND TO:

Messrs. FITZWILLIAM, STONE & ALCAZAR,
No. 78 Independence Square,
Port-of-Spain.

20

Plaintiff/Respondent's Solicitor

No. 9

In the Court
of Appeal

Judgment

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

No. 9
Judgment
18th November
1977

Civil Appeal
No. 35 of 1974

B E T W E E N

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Defendant/
Appellant

10

AND

GORDON GRANT AND COMPANY (1965) LTD
(In Voluntary Liquidation)

Plaintiff/
Respondent

Coram: C.E.G. Phillips, J.A.
E.A. Rees, J.A.
G.M. Scott, J.A.

November 18, 1977

R. Crane, S.C. (Miller and Kong with him) - for the appellant
T. Hosein, S.C. (Armorer and Martineau
with him) - for the respondent

20

J U D G M E N T

Delivered by Phillips, J.A.:

This appeal raises (to use the words of Rowlatt, J. in Grimson v Inland Revenue Commissioners, (1930) 2 K.B. 246 at 251, cited at the trial before Briathwaite, J.) "an important point which may not often arise in practice, but which is of a very fundamental character and of great importance." Apart from the applicability of these words, I have derived no assistance from that case in the determination of the question now in issue. It is as follows:

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Prior to the year 1963 the basis for the imposition of income tax on profits made by companies or dividends paid to shareholders of companies was regulated by the provisions of ss.5 and 6 of the Income Tax Ordinance, Ch.33 No. 1 (T. & T.) (as amended) which were to the following effect:

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5. "Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereafter for each year of assessment upon income of any person accruing in or derived from the Colony [later amended to 'Trinidad and Tobago'] or elsewhere, and whether received in the Colony or not in respect of -

[inter alia]

(a) gains or profits from any trade, business, profession, or vocation, for whatever period of time such trade, business, profession, or vocation may have been carried on or exercised; 10

.....

(d) dividends, interests, or discounts;

.....

(f) rents, royalties, premiums, and any other profits arising from property;

(g) any annual gains or profits not falling under any of the foregoing heads:

6. "Subject to the provisions of this Ordinance tax shall be charged, levied, and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment." 20

The Ordinance, originally passed in 1938, and amended on numerous occasions, has remained up to this date the foundation of the income tax legislation of this country. Significant milestones in the amending process were the Income Tax (Amendment) Ordinance, 1957, which introduced the P.A.Y.E. system in relation to emolument income and the Income Tax (Amendment) Act, 1963, the object of which was to establish an analogous system in respect of all non-emolument income. 30

By this Act, which was assented to on June 25, 1963 but was substantially deemed (s.49) to have come into operation on January 1, 1963, the scheme of the legislation was altered so as to empower the Revenue authorities to make charges of income tax in respect of the current year, the "year of income" and not (as was previously the case)

the year immediately preceding the year of imposition of the charge, i.e. the "year of assessment". This alteration was effected (inter alia) by

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- (1) deleting the definition of "year of assessment" and substituting therefor the following definition:-

"year of income" means the period of twelve months commencing on the 1st January in each year;

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- 10 (2) repealing and replacing s.6 of the Ordinance by the following provision:

6. "Tax shall be charged for each year of income upon the chargeable income of any person for that year."

20 The substantial effect of these amendments was to make the year of imposition of tax on company profits or dividends paid to a shareholder co-incide with the year of income. The charging process was to take place concomitantly with the making of the income and not in the subsequent year, and the legal concept of the "year of assessment" following the "year of income" disappeared from the statute-book.

For the purpose of regulating the basis of the imposition and collection of tax under the new system the following additional provisions (inter alia) were introduced into the Ordinance by s.44 of the Act (hereafter called "the 1963 Act"):

30 s.76A (1) "Notwithstanding anything contained in this Ordinance, other than the provisions of section 76, but subject to this section, income tax on all income (other than income tax on all emoluments within the meaning of section 53C), that would have been chargeable to tax for what would have been the year of assessment, 1963, had the Income Tax (Amendment) Act, 1963 not been passed, is hereby discharged.

40 (2) Where the tax payable by any person for the year of income 1963 is less than the tax that would have been payable for what would have been the year of assessment 1963 not been passed, the amount of tax to be discharged shall not exceed the amount

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of tax assessed and paid for the year
of income 1963, if

- (a) such person was in receipt of income
for part only of the year of income
1963; or
- (b) such person was in receipt of income
for part or the whole of the year of
income 1963, but the income

(i) did not include income from
such of the sources from which
the total income for what would
have been the year of assessment
1963, had the said Act not been
passed, was derived, as the
Commissioner may in any case
determine; or

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(ii) was income arising, accruing in,
derived from or received in
Trinidad and Tobago in respect
of a business, trade, profession
or vocation that, in the opinion
of the Commissioner, has been
voluntarily curtailed or reduced
by such person."

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It must be stated here, in parenthesis, that the Income
Tax (Amendment) Act, 1964 introduced the following amendment
to s.76A:

s.76A(6) "Where the amount of tax to be
discharged as determined by sub-section (2)
is less than the tax that would have been
payable for what would have been the year
of assessment 1963, had the Income Tax
(Amendment) Act, 1963, not been passed, the
remainder of the tax that would have been
so payable shall be deemed to be the tax
payable in respect of the year of income
1963."

30

s.76C. "Notwithstanding that any assessment
has been made upon any person before the
Income Tax (Amendment) Act, 1963 was
passed in respect of his chargeable income
for what would have been the year of
assessment 1963, had that Act not been passed,

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the provisions of this Ordinance shall have effect in relation to that income and the Commissioner may refund the amount paid, if any, in respect of the tax discharged by this Ordinance, or instead of making a refund may, where the person is liable or about to become liable to make a payment under this Ordinance for the year of income 1963 apply any part of that amount to that other liability and refund any balance to such person and notify such person of that action."

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The respondent to this appeal (hereafter called "the plaintiff") was at all material times a shareholder of three companies, viz: Caribbean Development Co. Ltd., Bermudez Biscuit Co. Ltd. and Gordon Grant & Co. (Tobago) Ltd. In the year 1962 the plaintiff received from these companies an aggregate sum of \$24,564.00 representing net dividends payable to the plaintiff after deduction by the respective companies of amounts payable by them as income tax on the said dividends. It is not in dispute that the total amount deducted for this purpose was \$16,376.00.

It is now necessary to quote the provisions of the Ordinance applicable to the deductions thus made by the paying companies. They are as follows:

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s.23(1) "Every company which is incorporated in Trinidad and Tobago, or which though incorporated outside Trinidad and Tobago, is registered under the provisions of section 298 of the Companies Ordinance, shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the company (double taxation relief being left out of account) on the income out of which such dividend is paid:

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Provided that where tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company."

s.23A

"A dividend paid by a company shall be deemed for all the purposes of this Ordinance, to represent income of such an amount as would, after such deduction of tax as is

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authorised by subsection (1) of section 23,
be equal to the net amount received."

s.23B(1)

"Where any dividend from which deduction of tax is authorised by sub-section (1) of section 23 is paid without deduction of tax, the amount received in respect thereof shall, for the purposes of this Ordinance, be deemed to be a net amount received in respect of a dividend from the gross amount of which such deduction as is authorised by the said subsection (1) has been made, and the provisions of section 23A shall apply accordingly.

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(2) The provisions of this section shall apply where, though a deduction is made from a dividend, that deduction is less than the full amount authorised as it applies where no deduction is made."

s.24

"Any tax which a company has deducted or is entitled to deduct under the last preceding section from a dividend paid to a shareholder, and any tax applicable to the share to which any person is entitled in the income of a body of persons assessed under this Ordinance, shall, when such dividend or share is included in the chargeable income of such shareholder or person, be set off for the purposes of collection against the tax charged on that chargeable income."

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s.24A

(1) "Notwithstanding section 24,

(a) where a dividend is paid to a shareholder, and

(b) where a share to which a person is entitled in the income of a body of persons assessed under this Ordinance is paid to that person,

out of the income of a company or other body of persons that has been discharged of tax by section 76A, such shareholder or person is not entitled when such dividend or share is included in the chargeable income of such shareholder or

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person to set off for the purposes of collection against the tax charged on that chargeable income or to be refunded by the Commissioner, any tax which the company has deducted or is entitled to deduct under section 23 from such dividend and any tax applicable to the share to which such person is entitled as aforesaid.

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10 (2) When a company has paid a dividend to any shareholder before the commencement of the Income Tax (Amendment) Act, 1963 out of income that is discharged of tax by section 76A, a refund of any amount to that shareholder in respect of tax that the company has deducted under section 23 from a dividend out of the income discharged as aforesaid shall be deemed to be a payment of a dividend, or where a
20 company instead of making a refund pays the said amount as a dividend or part thereof in any year of income to that shareholder, then the provisions of sub-section (1) shall apply accordingly."

The statutory provisions to which reference has been made constitute a general summary of the relevant law which existed when by letter dated April 16, 1966 the plaintiff's tax auditors, a firm of chartered accountants, claimed from the Commissioner of Inland Revenue repayment under s.46(1) of the Ordinance of the sum of \$16,376.00,
30 being tax deducted from dividends received by the plaintiff in the year 1962. The material portion of this letter is in the following terms:

"The above-named Company [i.e. the plaintiff] has not yet been assessed on its chargeable income arising in the year 1962 and consequently the discharge of the tax thereon, provided by Section 76A of the Ordinance, has not been effected.

40 We now formally request that you make the assessment on this client and effect the discharge as has been done to our knowledge with a considerable number of other taxpayers in relation to their 1962 income.

We formally claim repayment of tax under Section 46(1) in the amount of \$16,376, this being tax deducted from dividends received by Gordon Grant & Co. Ltd. in 1962, paid out of

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the 1961 income of various Companies, the details of which are shown in the annexed statements."

To this letter the following reply (dated June 7, 1966) was sent by the Commissioner of Inland Revenue:

"I refer to your letter of 16th April, 1966 and advise that tax on the income of 1962 has been discharged. However, under the Income Tax (Amendment) Act, 1963 no Section 24 relief is available for the year of income 1962 in respect of tax deducted at source from dividends."

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On June 30, 1966, at the request of the plaintiff's tax auditors, the Commissioner of Inland Revenue issued a tax assessment notice showing the following items relating to the year of income 1962:

(a)	Chargeable income	-	£310,630.00	
(b)	Total tax on £310,630	-	£124,252.00	
(c)	Tax discharged under sec.76A	-	£124,252.00	
(d)	Tax payable or refundable	-	NIL	20

The matter appears to have lain in abeyance for some time, but by letter dated April 20, 1967, addressed to the Chairman of the Board of Inland Revenue, the plaintiff's tax auditors stated the substance of their case in the following terms:

"Gordon, Grant & Company Limited are advised that, in view of the nil assessment for the year 1962, they are entitled to a refund of the said tax (amounting to the sum of T.T. £16,376.00) under the provisions of Section 46 of the Ordinance, such provisions being applicable (so they are advised) to the income of the year 1962 by virtue of Section 76C."

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This position was not accepted by the Revenue authorities. The result was that the plaintiff, by a writ of summons dated December 10, 1968 instituted proceedings in the High Court against the Attorney General for the recovery of the said sum of £16,376.00.

The foundation of the plaintiff's case as it was presented both before Braithwaite, J. in the High Court and before this Court is s.24 of the Ordinance which confers upon a shareholder, who has been paid a dividend from

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which a deduction for tax has been made by the paying company under s.23(1), the right of setting off the amount of the said deduction for the purposes of collection of tax on the shareholder's chargeable income in cases where such dividend is included in his chargeable income.

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10 In a written judgment by which he upheld the plaintiff's claim and ordered the Board of Inland Revenue to pay to the plaintiff the sum of \$16,376.00, and interest thereon at the rate of 6 per centum per annum from April 20, 1967 as well as the costs of the action (certified as fit for the retainer of two counsel) the learned judge succinctly stated the plaintiff's case in the following terms:

20 "What the plaintiff is contending is that it should be refunded that portion of its tax which was deducted at source by the paying companies and which amounted to \$16,376.00 and for which it was not given any credit in any way. This sum, the plaintiff maintains, represents an excess of tax and is therefore subject to be dealt with under section 46 of the Ordinance which reads inter alia as follows:

30 46(1) 'If it be proved to the satisfaction of the Commissioner that any person for any year of income has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within six years from the end of the year of income to which the claim relates. The Commissioner shall give a certificate of the amount to be repaid and upon the receipt of the certificate the Accountant General shall cause repayment to be made in conformity therewith.' "

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Thereafter the judgment continues as follows:

"Great stress was laid by counsel for the plaintiff on the words 'has paid tax by deduction or otherwise' occurring in sub-section (1) of the section and counsel's main argument on this

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point was that however it was done, whether by deduction or by any other method, the Board of Inland Revenue received \$16,376.00 in tax in respect of dividends declared in favour of the plaintiff from the paying companies which it should not have received in respect of the year of income 1962 or what is the same thing, the year of assessment, 1963.

Counsel for the plaintiff also argued that this being so, the Board of Inland Revenue received \$16,376.00 in excess of what it should have received, which, with respect to the particular year of income, should have been nothing - as it was a year in which income tax on all income that would have been chargeable to tax was discharged.

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On the other hand, counsel for the defendant described the year of assessment as . . . 'a phantom year' (a year that never really was). Consequently section 46(1) had no application especially in view of the fact that section 23(1) was not what he referred to as a charging section. Counsel for the defendant referred to section 24A of the Ordinance and stated that section 24A rendered section 24 inoperative where tax on non-emolument income for the year of income 1962 was discharged by section 76A of the Income Tax Ordinance."

20

The learned judge then applied himself to a consideration of s.24A(1) of the Ordinance (an amendment added by the 1963 Act) the applicability of which he clearly perceived to be the nub of the matter. He thereafter arrived at the conclusion that this section had no application to the facts of the case under review. He gave two reasons for his opinion. In the interests of clarity I consider it advisable to quote verbatim the following relevant extracts from his judgment:

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". . . although there is no specific statement showing that the paying companies had been discharged of tax under section 76A, it seems reasonable to assume that they had not been so discharged. I say so for the following reasons:

40

- (a) . . . Surely, had the tax paid by the paying companies been discharged under section 76A the Commissioner would have

pointed out that fact to the plaintiff.

- (b) If the tax had been discharged under section 76A, the least one could expect is that that fact would be specifically pleaded in the defendant's defence.'

I am therefore of the opinion that section 24A is inapplicable to the instant case and that if this opinion is correct the tax paid to the Inland Revenue Authorities by the paying companies was not discharged under section 76A and still resides with that authority.

I have no doubt that by deduction at source the plaintiff paid to the Commissioner of Inland Revenue the sum of \$16,376.00. This amount must have been in excess of what was properly chargeable because in the year of income 1962 all income tax on income was discharged. With section 24A not applying in the matter, the only possible conclusion to which I can come is that section 46(1) applies and that the plaintiff is entitled to have the amount of \$16,376.00 repaid to him (sic) by the Board of Inland Revenue."

I hasten to express my opinion that neither of the two reasons given by the learned judge appears to be capable of supporting his conclusion that s.24A(1) of the Ordinance was inapplicable to the matter. It seems to me that the first reason referred to at (a) above is, with due respect to the learned judge, logically invalid. As to the second reason it is sufficient to state

- (1) that it was no part of the defence that the sum of \$16,376.00 "had been discharged under s.76A" or any other provision of the 1963 Act;
- (2) that there is no legal requirement that pleadings should contain statements of law.

Indeed, the general principle applicable to pleadings is that they should contain statements of fact and not of law. For this proposition reference may be made to O.20, r.4, of the Rules of the Supreme Court, 1946 (T. & T.) [now repealed and replaced by substantially the same words in O.18, r.7(1) of the Rules of the Supreme Court, 1975] which (so far as is material) is to the following effect:

"Every pleading shall contain, and contain only, a

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statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. . . ."

In relation to this rule, which is an exact replica of the former O.19, r.4 of the English Rules of the Supreme Court, the following statement appears under the rubric - "Facts, not law" in the Annual Practice, 1940, p.345;

" 'Pleadings now are to be merely concise statements of the facts which the party pleading deems material to his case'. (per Brett, J., in Lord Hamner v Flight, (1876) 24 W.R. at p.347), not law, nor evidence to prove the facts (N.W. Salt Co. Ltd. v Electrolytic Alkali Co.Ltd. (1913) 3 K.B. 425). The inferences of law to be drawn from those facts need not be stated in the pleading."

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I must, however, make it clear that although I disagree with the learned judge's reasons for holding that s.24A of the Ordinance is inapplicable to the instant case, I accept as correct his conclusion that the paying companies were "not discharged of tax under section 76A", only in so far as it purports to be applicable to the sum of \$16,376.00 claimed by the appellant. The reason for this is that the relevant tax deductions were made by the companies in relation to tax payable by them on their 1961 profits to which s.76A can have no application.

20

It is also necessary to advert to the fact that there is no evidence to support what appears to be a finding that is implicit in the learned judge's decision, viz: that tax for the year of income 1962 was paid to the Revenue authorities by any of the three companies from which the plaintiff received a dividend in that year. On the assumption, however, that the sum of \$16,376.00 was paid to those authorities as tax deductions from the plaintiff's dividends derived from the 1961 profits of the paying companies (as claimed by the plaintiff in the letter of April 16, 1966 - exhibit "A"), it is clear that the sum in question represents the tax liability of those companies in respect of the said profits. In such circumstances no question can arise as to the discharge of that liability by any of the provisions introduced by the 1963 Act.

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It was submitted by counsel for the respondent that the learned judge's conclusion as to the non-applicability

of s.24A was plainly right. The argument adduced in relation to this point, was, however, remarkable for its sparseness. Counsel's sole submission was to the effect that the application of s.24A was ousted by the fact that the dividends that were paid to the plaintiff in 1962 emanated from pre-1962 profits of the paying companies. It therefore becomes necessary to consider whether the requisite conditions for the application of that section have been fulfilled. So far as material for present purposes those conditions are as follows:

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- (1) A dividend must have been paid to a shareholder out of the income of a company;
- (2) The income of the paying company must have been discharged of tax by s.76A.

Condition (1) has ex hypothesi been complied with. In order to determine whether or not condition (2) has been satisfied close attention must be paid to the wording of s.76A(1), which may be quoted again with advantage. It is as follows:

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76A(1) "Notwithstanding anything contained in this Ordinance, other than the provisions of section 76, but subject to this section, income tax on all income (other than income tax on all emoluments within the meaning of section 53(C), that would have been chargeable to tax for what would have been the year of assessment 1963, had the Income Tax (Amendment) Act, 1963, not been passed, is hereby discharged."

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It may be stated here, in parenthesis, that this provision is the counterpart of s.76(1) which came into operation in the field of taxation of emolument income when the P.A.Y.E. system was introduced into that field on January 1, 1958 by the Income Tax (Amendment) Ordinance, 1957. For easy reference the provisions of s.76(1) are set out hereunder:

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76(1) "Notwithstanding anything contained in this Ordinance, but subject to the provisions of this section, income tax on all emoluments arising or accruing in or derived from or received in the Colony during the year 1957 is hereby discharged."

It seems to me that on the true construction of s.76A, it is manifest that its object is to exempt from liability

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to tax all non-emolument income made during the year 1962. The resulting legal position, in my judgment, is that all companies that were in existence in 1962 were discharged of liability to be taxed on their income for that year. It is important not to confuse this situation with the entirely distinct question as to whether or not the dividends paid to the plaintiff in 1962 were derived from pre-1962 profits of the paying companies. That question is, in my opinion, immaterial to the issue as to whether or not the income of the paying companies was discharged of tax by s.76A. I have accordingly arrived at the conclusion that the second condition for the application of s.24A has also been satisfied.

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It was also urged on behalf of the respondent that if the intention of s.24A was to exclude the operation of s.24 in a case where a dividend was paid to a shareholder out of pre-1962 profits of the paying company, it would have been easy for the Legislature to make express provision for this. The answer to this submission is, of course, that the clear and unambiguous language used by the Legislature does not permit the restricted interpretation sought to be put upon the section. The paramount issue is whether the paying companies were "discharged of tax" within the meaning and for the purposes of s.76A of the Ordinance.

20

I am satisfied that this question is entirely one of law the determination of which depends solely on the true construction of s.76A of the Ordinance. No dispute as to any fact is involved in the case. Every law must, of necessity, apply to a defined state of facts. In the case under review it seems to me that the factual basis necessary for the application of s.76A is the undisputed existence of the paying companies during the whole of the year 1962. This fact is, in my judgment, the sole criterion for the operation of the section. Strictly speaking, they need not have existed during the whole of that year. What is required to make them fall within the purview of the section is their existence during any part of the year 1962.

30

It follows from this opinion that there can be no valid reason for holding that the facts of the present case are not within the operation of s.24A of the Ordinance. I am accordingly of the view that it is not open to the respondent to invoke the provisions of s.46. Indeed, I consider this to be a clear example of an occasion when the Court is bound to give effect to the operation of the maxim "Generalia specialibus non derogant".

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This conclusion is sufficient for the purpose of disposing of this appeal in favour of the appellant and it must not be thought that any disrespect to counsel is intended by the fact that I do not propose to deal either with the other arguments adduced or the authorities cited before the court. As to the latter, I have, like the learned judge, found most of them to be of little assistance in the determination of the questions raised by this appeal. In this connection I consider it appropriate to quote and respectfully adopt as my own the following statement appearing in the judgment of Wooding, C.J. in Reynolds v Income Tax Commissioner, (1964) 7 W.I.R. 154 at p.157:

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"It is therefore not very practicable in the instant case to rely on cases decided elsewhere save in respect of basic principles of construction. But even these call for little citation of authority: they are already too well known. They require me to discover within its four corners the true intent and meaning of the Ordinance. It must be read as a whole so as to correlate its several parts. Its language, when plain, must be given its full significance. Resort may be had to special rules of construction if its terms should prove ambiguous, but there should be no such recourse simply to provide a means of entry for the fisc or a hatch of escape for a taxpayer. The imposition of tax being the prerogative of the legislature, the courts must enforce what the legislature decrees. No exaction can be maintained which is not specifically levied, and no avoidance permitted which finds support from sophistry alone. Interpretation must be strict because it is a taxing statute but, as Rowlatt, J. explained in Cape Brandy Syndicate v Inland Revenue Commissioners (/1921/ 1 K.B. 64, at p.71) that principle:

'simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.' "

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For the reasons I have endeavoured to state I am of opinion that this appeal must be allowed with costs both in this Court and in the Court below and that the judgment of the learned judge should be set aside. I would make an order accordingly.

C.E.G. Phillips
Justice of Appeal

REES, J.A.:

I agree.

E.A. Rees
Justice of Appeal

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SCOTT, J.A.:

I also agree.

G.M. Scott
Justice of Appeal

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Order granting Final Leave to Appeal to
the Judicial Committee of the Privy Council

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Order granting
Final Leave
to Appeal to
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Committee of
the Privy
Council
23rd May 1978

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 35 of 1974

B E T W E E N

GORDON GRANT & COMPANY (1965) LIMITED
(In voluntary Liquidation)

Petitioner

AND

10 THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Respondent

Entered on the 31st day of May, 1978

On the 23rd day of May, 1978.

Before the Honourable Mr. Justice Clement Phillips
Mr. Justice Cecil Kelsick
Mr. Justice Garvin M. Scott

20 UPON MOTION made unto this Court this day by Counsel
for the above named Petitioner for an Order granting the
said Petitioner final leave to appeal to the Judicial
Committee of the Privy Council against the Judgment of
the Court of Appeal dated the 18th day of November, 1977
and Upon Reading the said Notice of Motion dated the
11th day of May, 1978 the affidavits of Carlyle Bharath
sworn the 11th day of May, 1978 together with the exhibit
therein referred to, all filed herein, And Upon Hearing
Counsel for the Petitioner and no one appearing for the
Respondent and unrepresented

THIS COURT DOETH ORDER

30 That final leave be and the same is hereby granted
to the said Petitioner to appeal to the Judicial
Committee of the Privy Counsel against the said Judgment
and the costs of this motion be costs in the cause.

CONRAD DOUGLIN

Registrar.

Exhibits

"A"

"A"
Letter
Fitzpatrick
Graham & Co.
to
Commissioner
of Income Tax
16th April
1966

Letter, Fitzpatrick Graham & Co. to
Commissioner of Income Tax

FITZPATRICK, GRAHAM & CO.
Chartered Accountants

16th April, 1966

The Commissioner of Income Tax
Ministry of Finance,
Inland Revenue Division,
Trinidad House,
Port of Spain

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Dear Sir,

Gordon Grant & Co.Ltd.
Income Tax - Income of 1962

The above-named Company has not yet been assessed on its chargeable income arising in the year 1962 and consequently the discharge of the tax thereon, provided by Section 76A of the Ordinance, has not been effected.

We now formally request that you make the assessment on this client and effect the discharge - as has been done to our knowledge with a considerable number of other taxpayers in relation to their 1962 income.

20

We formally claim repayment of tax under Section 46(1) in the amount of \$16,376, this being tax deducted from dividends received by Gordon Grant & Co.Ltd. in 1962, paid out of the 1961 income of various Companies, the details of which are shown in the annexed statements.

Accordingly we enclose:-

- (i) The Return of 1962 income duly completed and signed.
- (ii) The computation of the chargeable profits and of the Income Tax repayable.
- (iii) Statement of Wear and Tear Allowances.
- (iv) Detailed departmental Trading Accounts
- (v) A copy of the company's statutory accounts showing dividends received of \$83,540 before deduction of tax.

30

- (vi) A Schedule giving the detail of these dividends, five of which were paid out of 1962 income (in respect of which the tax deducted has since been refunded by the companies); three dividends were paid out of 1961 income and the tax deducted therefrom has not been refunded.
- (vii) Duplicate Warrants for three dividends paid out of 1961 income.

Exhibits

 "A"
 Letter
 Fitzpatrick
 Graham & Co.
 to
 Commissioner
 of Income Tax
 16th April
 1966

10 We are anxious to resolve this matter as soon as possible and would appreciate receiving the assessment at an early date.

Yours faithfully,

(Sgd) Fitzpatrick, Graham & Co.

"B"

Letter, Commissioner of Inland Revenue
 to Fitzpatrick Graham & Co.

"B"
 Letter
 Commissioner
 of
 Inland Revenue
 to Fitzpatrick
 Graham & Co.
 7th June
 1966

MINISTRY OF FINANCE

Trinidad House, St. Vincent Street, Port-of-Spain
 Trinidad and Tobago

20

7/6/1966

Messrs. Fitzpatrick Graham & Co.Ltd.,
 Chartered Accountants,
 72-74 South Quay,
Port of Spain

Dear Sirs,

Gordon Grant & Co. Ltd.
Income of 1962 - Ref. No. 1/1464

30

I refer to your letter of 18th April, 1966 and advise that tax on the income of 1962 has been discharged. However, under the Income Tax (Amendment) Act 1965 no Section 24 relief is available for the year of income 1962 in respect of tax deducted at source from dividends.

Yours faithfully,
 (Sgd)

for Commissioner of Inland Revenue

Exhibits

"C"

——
"C"
Letter,
Fitzpatrick
Graham & Co.
to Commissioner
of Inland
Revenue
17th June 1966

Letter, Fitzpatrick Graham & Co. to
Commissioner of Inland Revenue

FITZPATRICK GRAHAM & CO.
Chartered Accountants

17th June, 1966.

The Commissioner of Inland Revenue,
Inland Revenue Division,
Ministry of Finance,
Trinidad House,
Port-of-Spain

10

Dear Sir,

Gordon Grant & Co. Ltd.
Income of 1962 - File No.1/1464

We are much obliged for your letter of 7th June -
which crossed our recent reminder in the post - and
note that tax on the income of 1962 has been discharged.

We should be very much obliged if you would kindly
let us have a Notice of Assessment to that effect.

Yours faithfully,

"D" Notice of Assessment for 1962

TAKE NOTICE that an assessment to Income Tax has been duly made upon you by the undersigned Commissioner of Income Tax in respect of your income for the year stated hereon.

GORDON GRANT &
Co., LTD
10 ST. VINCENT ST
P.O. Spain

GOVERNMENT OF TRINIDAD AND TOBAGO

TAX ASSESSMENT NOTICE

FILE NUMBER
111464



Notice of Assessment under Sub-section (1) of Section 42 of the Income Tax Ordinance, Ch 33, No. 1.

INLAND REVENUE DIVISION
MINISTRY OF FINANCE,
TRINIDAD HOUSE,
TREASURY STREET,
PORT OF SPAIN.
TEL. 32981

INCOME YEAR
1962

Htz 8/2/62
WFE
"D" Notice of Assessment for 1962
30th June 1962

OBJECTIONS TO, AND APPEALS AGAINST, ASSESSMENTS.

If you dispute the above Assessment, or any part thereof, you may apply to the Commissioner by notice in writing, stating therein the precise grounds of your objection, within fifteen days from the date of the service of this Notice of Assessment. In the event of your subsequent agreement with the Commissioner as to the amount at which you are liable to stand assessed, the assessment will—when necessary—be amended accordingly.
(Section 42 (4) of the Ordinance.)

SOURCE OF INCOME	CODE	INCOME		LOSSES		WIFE
		SELF	WIFE	SELF	WIFE	
Trade in Business	12/31	573876		63246		
Wages and Fees	8/2/31					
TOTALS OF INCOMES AND LOSSES		\$ 373876		63246		

LESS ALLOWANCES	PERSONAL	WIFE	AMOUNT	CHILD		INSURANCE	TOTALS
				"A"	"B"		
							\$ 310630

CHARGEABLE INCOME \$ 310630

DATE OF ISSUE	BATCH NO.	CHARGEABLE INCOME	
		DOLLARS	CENTS
91-52		\$124,250	00
99-72		184,250	00
Total Tax on 310630 DOLLARS CHARGEABLE INCOME Tax Discharged under Sec 76A			
PAYMENT OF TAX Tax is payable within 30 days from the day of service of the notice of Assessment (day of service being the 15th day succeeding the day when posted). Any tax unpaid at the prescribed date will be charged a penalty at the rate of 12% p.a. for the first year and 15% p.a. thereafter.			
30 JUN 1962			

T - TAX PAYABLE.
R - TAX REFUNDABLE.

Exhibits

"E"

—
 "E"
 Letter, Pannell
 Fitzpatrick
 & Co. to
 Board of
 Inland
 Revenue
 20th April
 1967

Letter, Pannell Fitzpatrick & Co. to Board of
 Inland Revenue

PANNELL FITZPATRICK & CO. PEAT, MARWICK, MITCHELL & CO.
 72-74 South Quay
 Post Office Box 158
 Port of Spain
 Trinidad

20th April, 1967.

The Chairman,
 The Board of Inland Revenue,
 Ministry of Finance,
 Inland Revenue Division,
 Trinidad House,
 St. Vincent Street,
Port-of-Spain

10

Dear Sir,

Gordon Grant & Co. Ltd.
Income Year 1962 - File No. 1/464

We refer to your Notice of Assessment issued on
 June 30, 1966, regarding the income of the above company
 for the year 1962. This notice showed the tax liability
 of the Company for the year as nil.

20

Included in the Company's income for the year in
 question were a number of dividends (details were furnished
 to you by us by our letter of April 16, 1966) paid by various
 local companies during the year out of their profits for
 previous years and from which tax had been deducted at the
 appropriate rate and accounted to your office in accordance
 with the requirements of the Income Tax Ordinance.

30

Gordon, Grant & Company Limited are advised that, in
 view of the nil assessment for the year 1962, they are
 entitled to a refund of the said tax (amounting to the sum
 of T.T. \$16,376.00) under the provisions of Section 46 of
 the Ordinance, such provisions being applicable (so they
 are advised) to the income of the year 1962 by virtue of
 Section 76C.

Accordingly we would ask you to forward a refund of
 the said tax to us on behalf of the Company.

Yours faithfully,

40

(original
 signed) PANNELL FITZPATRICK & CO.

"F"

Letter, Commissioner of Inland Revenue
to Pannell Fitzpatrick & Co.

MINISTRY OF FINANCE
(BOARD OF INLAND REVENUE DIVISION)

Trinidad House, St. Vincent Street,
Port-of-Spain, Trinidad & Tobago

20th October 1967

Exhibits

—
"F"
Letter,
Commissioner
of Inland
Revenue to
Pannell
Fitzpatrick
& Co.
20th October
1967

10

Pannell Fitzpatrick & Co.
72-74 South Quay,
P.O. Box 158
Port of Spain

Dear Sirs,

Gordon Grant & Co.Ltd.
Year of Income 1962 - File No.1-1464

I refer to your letter dated 20th April, 1967 in connection with the above and regret the delay in replying.

20

I attach a copy of my letter dated 7th June, 1966, and again confirm that the provisions of the Income Tax Ordinance Ch.33 No. 1 dealing with the repayment of tax deducted from dividends were made inapplicable to dividends declared in 1962 by the operation of the Income Tax (Amendment) Act 1963.

Yours faithfully,

(Sgd)

Commissioner of Inland Revenue

Exhibits

"G"

Duplicate
Dividend
Notice,
Caribbean
Development
Co. Ltd.
3rd November
1961

60.

"G"

Duplicate Dividend Notice,
Caribbean Development Co.Ltd.

DUPLICATE CARIBBEAN DEVELOPMENT COMPANY, LIMITED DUPLICATE
69 Independence Square, Port-of-Spain,
Trinidad, W.I.

DIVIDEND NOTICE - "BW PREFERENCE SHARES No. 94
Date: 3rd November, 1961

S.R. Folio G-37

Dear Sir/Madam,

I enclose Warrant for FINAL DIVIDEND of 5% on each 'B' Preference share
in respect of the year ended 30th June, 1961 on 2,000 Shares of \$50.00 each held
by you.

	£. s. d.
DIVIDEND	5,000.00
Less: Trinidad Income Tax at 40%	<u>2,000.00</u>
	<u>3,000.00</u>

I certify that the Income Tax on the profits out of which the above-
mentioned dividend is paid has been, or will be, duly accounted for by the
Company to the proper Officer for the receipt of Taxes.

M.B. Proprietors claiming exemption from or abatement of Income Tax are
informed that the Commissioner of Inland Revenue will accept this statement as a
Certificate of the deduction of Income Tax. It should therefore be carefully
preserved. A charge of 24 s (one shilling) will be made for each duplicate issued.

(Sgd)

Secretary

Messrs. Gordon Grant & Co.Ltd.
6 & 8, St. Vincent Street,
Port of Spain.

"H"

Dividend Notice,
Bermudez Biscuit Company, Ltd.
Biscuit Manufacturers
6 Maloney Street
Mount Lambert, Trinidad, W.I.

Exhibits

"H"
Dividend
Notice
Bermudez
Biscuit Co.
Ltd.
10th October
1962

NOTICE OF PARTICIPATING DIVIDEND (2% PER ANNUM) FOR
YEAR ENDED 31st AUGUST, 1961 ON "B" PREFERENCE SHARES

10th October, 1962

10 Messrs. Gordon, Grant & Co. Ltd.,
St. Vincent Street,
PORT OF SPAIN.

Dear Sir

A Participating Dividend at the rate of 2% per annum on the "B" Preference Shares of the Company was duly declared at the Annual General Meeting held on 3rd October, 1962, in respect of the year ended 31st August, 1961. This dividend, added to those already paid, results in a total dividend of 10% per annum for the year ended
20 31st August, 1961.

I enclose cheque for the amount in respect of the shares registered in your name.

5000 "B" Preference Shares of \$10.00 each	
@ 2% per annum from 1st September 1960	
to 31st August 1961	\$1,000.00
Less Income Tax 40%	400.00
Amount of Cheque	<u>\$ 600.00</u>

30 I hereby certify that the Income Tax on the profits of the Company, of which profits this Dividend forms a portion, has been or will be paid to the proper officer for the receipt of taxes.

(Sgd) For and on behalf of
BERMUDEZ BISCUIT CO. LTD.
Secretary/Director

N.B. - This notice should be preserved as it will be accepted by the Inland Revenue Authorities in connection with any claim to allowance or relief from Income Tax.

Exhibits

"I"
 Duplicate
 Dividend
 Notice,
 Gordon Grant
 & Co.
 (Tobago) Ltd.
 11th December
 1961

"I"

Duplicate Dividend Notice
 Gordon Grant & Co. (Tobago) Ltd.

DUPLICATE

GORDON, GRANT & CO. (TOBAGO) LTD.
 Successors to James A. Scott

General Hardware & Lumber Merchants
 P.O. Box 206
 SCARBOROUGH
 TOBAGO, WEST INDIES

10

11th December 1961

To: MESSRS. GORDON, GRANT & CO. LTD.
PORT OF SPAIN

ORDINARY SHARE DIVIDEND

Dividend No. 7 of 10% for the Year ended
 30th September, 1961, on Ordinary Shares

10% on 3,492 Shares of \$100	\$34,920.00
<u>Less:</u> Income Tax @ 40%	<u>13,968.00</u>
	<u>\$20,952.00</u>

BY ORDER OF THE BOARD

20

(Signed) G.J. Baker
 Secretary
 GORDON, GRANT & CO. (TOBAGO) LTD.

Shareholders entitled to recover Income Tax are
 informed that the above certificate should be retained
 for that purpose.

CERTIFIED:

(Sgd) Stanley M Tait
 Secretary
 GORDON, GRANT & CO. (TOBAGO) LTD.

30

63.

"J"

Duplicate Dividend Notice,
Gordon Grant & Co. (Tobago) Ltd.

DUPLICATE

GORDON, GRANT & CO. (TOBAGO) LTD.
Successors to James A. Scott

General Hardware & Lumber Merchants
P.O. Box 206
SCARBOROUGH
TOBAGO WEST INDIES

11th December, 1961

to: J.F. MERRY, ESQ.

ORDINARY SHARE DIVIDEND

Dividend No. 7 of 10% for the Year ended
30th September, 1961, on Ordinary Shares

10% on 1 Share of \$100	\$ 10.00
<u>Less:</u> Income Tax @ 40%	<u>4.00</u>
	<u>\$ 6.00</u>

BY ORDER OF THE BOARD

(Signed) G.J. BAKER
Secretary
GORDON, GRANT & CO. (TOBAGO) LTD.

Shareholders entitled to recover Income Tax are informed
that the above certificate should be retained for that
purpose.

CERTIFIED:

(Sgd) Stanley M Tait
Secretary
GORDON, GRANT & CO. (TOBAGO) LTD.

Exhibits

"J"

Duplicate
Dividend
Notice,
Gordon Grant
(Tobago) Ltd
11th December
1961

10

20

Exhibits

"K"

Duplicate
Dividend
Notice
Gordon Grant
& Co.
(Tobago) Ltd
11th December
1961

"K"

Duplicate Dividend Notice
Gordon Grant & Co. (Tobago) Ltd.

DUPLICATE

GORDON, GRANT & CO. (TOBAGO) LTD.
Successors to James A. Scott

General Hardware & Lumber Merchants
P.O. Box 206
SCARBOROUGH
TOBAGO WEST INDIES

10

11th December, 1961

To: MAJOR G.C. HOWDENORDINARY SHARE DIVIDEND

Dividend No. 7 of 10% for the Year ended
10th September, 1961, on Ordinary Shares

10% on 1 Share of \$100	\$ 10.00
<u>Less:</u> Income Tax @ 40%	<u>4.00</u>
	<u>\$ 6.00</u>

BY ORDER OF THE BOARD

(Signed) G.J. BAKER
Secretary
GORDON, GRANT & CO. (TOBAGO) LTD.

20

Shareholders entitled to recover Income Tax are
informed that the above certificate should be retained for
that purpose.

CERTIFIED:

(Sgd) Stanley M Tait
Secretary
GORDON, GRANT & CO. (TOBAGO) LTD.

Exhibits

"L"

Certificate of Dividends paid
Gordon, Grant & Co. (Tobago) Ltd.

GORDON, GRANT & CO. (TOBAGO) LTD.
Successors to James A. Scott

General Hardware & Lumber Merchants
P.O. Box 206
SCARBOROUGH
TOBAGO WEST INDIES

"L"

Certificate
of Dividends
paid, Gordon
Grant & Co.
(Tobago) Ltd
3rd February
1966

10

3rd February 1966

CERTIFICATE

I hereby certify that Gross Dividends amounting to \$34,940.00 as detailed below, were paid to Gordon, Grant & Co.Ltd. in December 1961, out of the profits of Gordon, Grant & Co. (Tobago) Ltd. for the year ended 30th September 1961, and that the Tax deducted therefrom amounting to \$13,976.00 was accounted for to the Commissioner of Income Tax.

20

I further certify that the above tax has at no time been refunded to Gordon, Grant & Co.Ltd. and that it is not intended that any refund shall be made.

For and on behalf of
GORDON, GRANT & CO. (TOBAGO) LTD.

(Sgd) Stanley M Tait

S.M. Tait, C.A.
SECRETARY

	No. of <u>Shares</u>	Gross Dividend <u>at 10%</u>	Less Tax <u>at 40%</u>	<u>NET</u>
30 Gordon, Grant & Co.Ltd.	3,492	\$34,920.00	13,968.00	20,952.00
J.F. Merry	1	10.00	4.00	6.00
G.C. Howden	1	10.00	4.00	6.00
	<u>3,494</u>	<u>\$34,940.00</u>	<u>13,976.00</u>	<u>20,964.00</u>

O N A P P E A L
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :-

GORDON GRANT AND COMPANY (1965)
LIMITED (Plaintiff)

Appellant

- and -

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO (Defendant)

Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
LONDON SW1E 6HB

Solicitors for the Appellant

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn
LONDON WC2A 3UL

Solicitors for the Respondent