In the Supreme Court of Judicature of Jamaica

In the High Court of Justice

In the matter of the Companies Act, 1965.

AND

In the matter of an appeal by Crown Continental Merchant Bank Jamaica Ltd., against an order of the Registrar of Companies pursuant to Sec. 19 (3) of the Companies Act.

(Crown Continental Merchant Bank Jamaica Ltd. v. Registrar of Companies)

Ronald Williams Q.C. for the appellant;

Dr. Rattray Q.C. (Snr. Asst. Attorney General) and with him, Michael Ziadie (Crown Counsel) for the Registrar of Companies.

Nov. 11, 12, [illegible], 15, 1971

and Oct. 19, 1972.

Parnell, J. This is an appeal by way of motion against the direction of the Registrar of Companies.

On the 15th November, 1971, at the end of the arguments, I announced that the appeal would be allowed, that the direction of the Registrar calling upon the company to change its name would be set aside and that there would be no order as to costs. I promised to put my reasons in writing and I now do so.

A company is formed.

The history of the formation and registration of the appellant company was given by Mr. Colin Charles Adams, an Attorney-at-Law and Managing Director of the said company and Mr. G. Arhtur Brown, the

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Governor of the Bank of Jamaica and the Principal Economic Adviser to the Jamaica Government. Each of these gentlemen filed an affidavit in support of the motion on behalf of the appellant praying that the direction of the Registrar of Companies should be set aside. And both gentlemen were cross-examined very carefully by Dr. Rattray on behalf of the respondent.

The events leading up to the formation of the company may be stated briefly. Ever since Jamaica attained Independence, the Crown Agents in London had been pressed to take a more active role in the economic development of Jamaica. The Bank of Jamaica has invested millions of dollars with the Crown Agents and during the past 3 years, a closer relationship now exists between the Crown Agents and the Bank of Jamaica than formerly. The money which the Bank of Jamaica invests with the Crown Agents belongs to the public. Before Independence, the Bank of Jamaica was under an obligation to deal with the Crown Agents in the area of investment of funds but since Independence, the question of an obligation to continue dealing with them does not arise. However, the Bank of Jamaica continues to do so on a voluntary basis. This decision is based on the return received on investments; the integrity of the Crown Agents; past services rendered to the Government and people of Jamaica and the safety of funds in their hands as agents.

Sometime in 1969, the Crown Agents agreed in principle that they would do something in and for Jamaica in the field of economic expansion. The Crown Agents stipulated, however, that they would like to have an American partner. And an American partner was found. The Continental Illinois National Bank and Trust Company of Chicago agreed

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to finance the formation of a Merhhant Bank in Jamaica with the Crown Agents. To use the language of Mr. Brown, with this agreement, the Bank of Jamaica regarded the project as a "break through" for the country.

A "marriage" having been arranged between the Crown Agents and the American Bank which is regarded as the largest in the American Mid West, the question arose as to the selection of a suitable name under which the "union" would operate and be known to the world. It was decided that the name should be;

"Crown Continental Merchant Bank of Jamaica Ltd.,"

This name is formed from a combination of the names of the two promoters. The word "Crown" identifies the Crown Agents; the word "Continental" identifies the American partner; the words "Merchant Bank" indicate the area of the activities of the proposed Bank while the words "Jamaica Ltd." indicate that the Bank will operate in Jamaica under limited liability.

On the 30th December, 1969, the Bank submitted a memorandum to the Governor of the Bank of Jamaica, setting out the operational plan for the Bank. The Governor of the Bank consulted the then Minister of Finance and Planning. In consulting the Minister, the Governor of the Bank at the time addressed two questions to himself, namely;

(1) Is the proposed Company entitled to use the word "bank" in its name having regard to the Banking Law (Law 31/1960)?

(2) Was the name selected in any way undesirable?

It is common knowledge that the operation of all Banks in Jamaica carrying on "banking business " within the meaning of the Banking

Law is under the control of the Minister of Finance and Planning. And where as in this case - a company calling itself " a Merchant Bank" does not propose to receive money from the public on a current or deposit account payable on demand by cheque or order at the direction of the customer, the promoters, out of an abundance of caution, may still wish to clear the name with the appropriate authority in the light of its memorandum of association. On behalf of the public, the Minister and the Governor of the Bank of Jamaica would be required to examine the memorandum in detail and to say whether there is anything "undesirable" or "objectionable" in the proposed scheme of operation.

On the 23rd January, 1970, the Governor of the Bank of Jamaica informed the Managing Director of the Crown Continental Merchant Bank, inter alia, that "the plan is regarded as being in order" and that "there is no objection to the use of the word 'Bank' in the title of the Company."

At no time was the proposed name of the company considered as being "undesirable" by either the Governor of the Bank of Jamaica or by the Minister of Finance.

On the 2nd. February, 1970, the appellant filed with the Registrar of Companies all the documents required by law for its incorporation. On the 4th February, 1970, the Company was duly incorporated and registered under the name

"Crown Continental Merchant Bank Jamaica Ltd."

A certificate was issued to this effect.

The certificate issued to the appellant on the 4th February, 1970, is in my view, prima facie evidence that the Registrar of Companies did

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not consider the name to be undesirable. Before registration, the Registrar was under a statutory duty, having regard to all the documents which were before him, to consider the question of whether the proposed name was undesirable. This duty is clearly set out in Sec.19 (1) of the Companies Act which states:

> "No company shall be registered by a name which in the opinion of the Registrar is undesirable."

But a shock is in store for the newly incoporated Company.

The name is considered undesirable by the Registrar.

On the 14th April, 1970, the Managing Director of the appellant Company, filed with the Registrar all the appropriate documents which are necessary for the obtaining of the Registrar's Certificate pursuant to Sec. 108 (2) of the Act. Without this certificate, the appellant would not have been legally entitled to commence business. On the date the documents were filed, the Registrar of Companies who issued the certificate of incorporation about 10 weeks before, was on leave. Someone was acting as Registrar. And the Acting Registrar on the 18th April, 1970 "ruled" that the Company's name was undesirable. It appears that the word "Crown" in the name did not appeal to the Acting Registrar. It was an anathema which spoilt the whole show. I shall return to this point in due course. A letter sent to the Managing Director under that date is terse and pointed. The operative portion reads:

> "I have to inform you that I do not regard the above name as being a desirable name for a Limited Liability Company under the Companies Act, 1965, and in the circumstances, I have to direct that you change the said name under the conditions contained in Section 19 (3) of the Companies Act, 1965."

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The prima facie evidence that nothing was wrong with the name which the certificate of incorporation carried was summarily displaced by the ruling; the money expended by the Company in printing and distributing bills, documents, books and other literature on the basis that the name of the Company was in order as settled by the promoters and blessed by Government would be in jeopardy if the Acting Registrar's ruling had to be complied with. Perhaps, persons who had indicated that they would do business with the Bank would have their confidence shaken if they were to be told that the name of the Bank had to be changed so early after incorporation. And confusion in the minds of the promoters as to the desirability of establishing or continuing with their scheme would be encouraged.

In the face of this stand by the Acting Registrar, the Managing Director wrote a letter on the 7th May, 1970.

The letter is addressed to the Registrar of Companies. I shall not quote it in full but will refer to its substance. The Managing Director pointed out the following:

(1) How the name was selected and why;

(2) The activities of the Crown Agents are referred to and a recent report concerning the Crown Agents is enclosed.

(3) That the name "Crown" in the name of the Company could formerly be used with the approval of the Governor General in Council but the power to give or withold consent is now vested in Government or the appropriate Minister of Government;

(4) That the name of the Company "is acceptable to Government."

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On the 13th May, the Registrar acknowledged receipt of the letter of the Managing Director and indicated that "further consideration may be given to the matter" but asked certain questions touching the holding of shares and whether the Bank would be

"under control of the Government of Jamaica".

On the 18th May, the Managing Director acknowledged receipt of the letter. He expressed his doubt concerning the meaning of "the control of the Government of Jamaica" mentioned in the letter of May 13 and he stated clearly that:

"An equal moiety of the issued shares of Crown Continental Merchant Bank Limited will be held by or on behalf of Crown Agents in London."

The letter of the 18th May was acknowledged by the Registrar of Companies on September 24, 1970. It took over 4 months for this to be done. It is addressed to Mr. C.C. Adams, Managing Director of the Company. It reads:

"Dear Sir,

re:Crown Continental Merchant Bank
Jamaica Limited

With reference to previous correspondence ending with your memorandum of the 8th May, 1970, in connection with the above Company, it is regretted that in my own opinion the name is undesirable.

I therefore direct you to change the name of the Company within six weeks of the date of this notice in accordance with Section 19 (3) of the Companies Act, 1965."

I have already referred to the Registrar's reason for the stand taken. He sets it out clearly in paragraph 7 of the affidavit of Mr. Gladstone Glasgow, the Acting Assistant Registrar of Companies. The affidavit is dated November 20, 1970 and the relevant paragraph reads thus:

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"The Registrar of Companies maintains that the name Crown Continental Merchant Bank Jamaica is undesirable because it suggests connection with the Crown in Jamaica and/or the Government of Jamaica and the Registrar of Companies has been informed by the Company that the Crown in Jamaica and/or the Government of Jamaica has no legal or equitable interest in the Company."

If the reasoning of the Registrar is to be reduced to a syllogism, the results appears to be this:

(1) All names of companies incorporated in Jamaica with the word "Crown" as part thereof, suggest a connection with the Crown in Jamaica and/or the Government of Jamaica;

(2) But the word "Crown" appears in the appellant's name,

(3) Therefore, the appellant's name suggests a connection with the Crown in Jamaica.

It is clear that from this reasoning which, on the face of it, is obviously bad, the conclusion is drawn that the name is "undesirable". I shall return to this aspect of the case in due course.

The authority of the Registrar to call upon a company to change its name after incorporation on the ground that the existing name is undesirable, is given by Sec.19 (3) of the Company's Act. This power is a new one introduced by the Act of 1965 which came into force on January 1, 1967. The section states as follows:

"If at any time after a company has been registered it appears to the Registrar that the name under which it is registered is undesirable, the Registrar may notify the company accordingly and may in such notification direct the company to change its name, and the company shall change its name, within six weeks of such direction unless within that time it shall have lodged an appeal to the Court against such direction. The Court shall thereupon either cancel or confirm such direction and its decision shall be final and conclusive. If the direction shall be confirmed the company shall change its name within six

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weeks of such confirmation."

The Registrar is given power to call upon a company to change its name even where the company has already been registered. But the Registrar may only exercise this power where he thinks "that the name under which it is registered is undesirable." The company must comply with a direction within 6 weeks of its being notified by the Registrar unless an appeal is lodged against the order of the Registrar.

One of the issues raised in this appeal is whether in fact the appeal was brought in time; that is to say, within 6 weeks of the company being notified by the Registrar that it should change its name.

Legal arguments-one issue

It was conceeded by Mr. Williams that the appeal would be out of time if the letter of the 18th April, 1970 is to be treated as the direction from the Registrar to the Company to change its name. However, he argued that if the letter of the 24th September, 1970 is in fact the effective direction, then the appeal was brought in time. He pointed out that the notice of appeal by way of motion is dated November 5, 1970 and was filed on that date. Mr. Williams contended that by the letter of the 13th May 1970, the Registrar is deemed to have abandoned or waived any right which he may have had under the letter of the 18th April, 1970 by insisting that the Company should comply with the direction therein contained within 6 weeks of the notification. In the alternative, Mr. Williams argued that the Registrar was estopped from asserting that the time for appealing commenced to run from April 18, 1970. He relied on a proposition which was enunciated in the High Trees Case [1947] K.B. 130 and cited at para.1175 of the Halsbury's Laws of England,

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3rd Edition. Vol. 14. The relevant portion relied on is this:

> "Where one party has, by words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him."

Replying to these submissions, Dr. Rattray contended that:

(1) It was to the knowledge of the appellant that the Registrar was maintaining his position that the name of the company was undesirable;

(2) The appellant should have filed its notice of appeal during the time given by law and then continue the negotiations;

(3) Time does not cease to run simply because negotiations may be proceeding and a party, in order to protect his position should take some judicial step to preserve his right from extinction. The section provides its own statute of limitation as far as time for appealing is concerned;

(4) The time for appealing against the Registrar's direction started to run as from the 18th April, 1970 amd expired on May 31, 1970.

In developing these submissions, Dr. Rattray referred to the affidavit of Mr. Glasgow dated the 2nd November, 1971. In this affidavit Mr. Glasgow denied certain statements of fact deponed to by the Managing Director of the appellant in an affidavit dated June 18, 1971. Mr. Adams (the Managing Director) in substance, said this:

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(a) That on July 1, 1970, he phoned the office of the Registrar General and he spoke to Mr. Glasgow and that he did this because he had not received, up to this date, any reply to his letter of the 18th May, forwarding the information asked for by the Registrar in his letter of May 13,

(b) That Mr. Glasgow, in the course of the telephone conversation, told him that the matter was still under consideration and that if

> "we did nothing further it was his opinion that the objection to the Company's name would die a natural death."

(c) That Mr. Glasgow further said that the Registrar would be returning to office in November

> "and would propably over-rule the acting officer's objection to the name."

Mr. Glasgow has admitted that he did engage Mr. Adams in a telephone conversation but has denied the allegations in (b) and (c) above. It is not necessary for me to make a considered finding in this apparent clash between the Managing Director and Mr. Glasgow. I must, however, record that if it was incumbent for me to reconcile this contradiction, I would be inclined to prefer the version given by Mr. Adams.

In an affidavit dated the 20th November, 1970, Mr. Glasgow stated as follows in paragraph 8.

> "the letter from the Registrar of Companies dated the 24th. September, 1970 mentioned and referred to in the affidavit of Colin Charles Adams and marked 'C.C.A.3' was issued in error and I have been advised that such letter has no legal effect."

What I have before me is a situation which can be put in simple terms. A company is incorporated under a certain name. Ten weeks after

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the incorporation, the Registrar of Companies called upon the Company to change its name. The Company registered a protest. This direction followed an application by the company for a certificate to enable it to start business. A letter is sent to the Registrar explaining why he should not persist in his view that the name of the company is undesirable. In order to give "further consideration" to the protest, the Registrar asked for certain particulars. These are supplied by the Compnay. Six weeks passed and then the Company's Managing Director phoned the office of the Registrar General and a senior officer of that Department engaged the Managing Director in a conversation. He is informed that the matter was still under consideration. This apparent "active consideration" lasted for another 12 weeks when a letter dated September 24, 1970 is written. The letter calls upon the Company to change its name.

> "within six weeks of the date of this notice in accordance with Sec. 19(3) of the Companies Act, 1965."

How in the face of the outline of these events it can be said that an "error" was made in writing the letter of September 24 is beyond my understanding. And in suggesting that this letter has no legal effect is in my view, not in accordance with good judgment or fair play.

The Registrar of Companies is the person who is to decide whether a company's name is undesirable or not. The law gives him the power to act either before he decides to effect registration or after registration. He is allowed to act in the public interest. If he sends out a notice calling upon a company to change its name, he may, on reflection, recall the notice for further consideration to be given either as a result of his own motion or as a result of representations

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made to him by the Company affected. If the Registrar is adamant then the Company must comply with the direction within 6 weeks of the notice unless during that period it files a notice of appeal.

If the Registrar, however, by word or conduct indicates to the Company that he will give further consideration to representations made to him, then in my view, he would be deemed to have suspended the operation of the notice or to have withdrawn it pending his further ruling. The effective notice will be the one given after he has considered the matter further as he had promised to do. It could not be the notice which was objected to. If it were otherwise, the Registrar could lead a company into a trap by lulling it into the belief that everything would be in order by the Company not appealing in time against an obviously bad direction. At the hearing of the appeal, the Company would then be driven from the judgment seat without a proper hearing on the merits of its complaint. And this result would be the fruit of the strategy of the Registrar himself who would be the respondent in the proceedings.

The citizens of Jamaica and all companies operating in this country have the right to put confidence in the word, assurance or undertaking of every public officer (including the Registrar of Companies) given or promised in the line of duty as such officer. And the Court will hold the officer to his promise or assurance where possible, in order to maintain the confidence which he expects the public have in him and to prevent injustice or embarrassment to any person who has no control over the action of the officer in question.

There is a well known saying of antiquity that:

"Confidence placed in another often compels confidence in return."

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In answer to a question posed by the court, Dr. Rattray conceded that if the Registrar of Companies had written to the Company to the effect that no action should be taken to effect a change of name in the light of new facts which have come to the Registrar's attention, then it would be in order for the Registrar to issue a "fresh direction" to the Company and time to appeal against this "fresh direction" would begin to run from the date of that notice. It seems to me that by this concession, he was in effect concurring in the substance of the argument of Mr. Williams that the "effective notice" containing the direction to the company is in the letter of the Registrar dated September 24, 1970.

It is regretted that the arguments put forward on behalf of the Registrar of Companies on this aspect of the case were ever advanced.

Legal arguments on the merits

On the merits, Mr. Williams made certain submissions which may be summarised as follows:

(1) There is no statutory prohibition against the use of the word "Crown" as part of the name of a company;

(2) Even if there was no connection whatsoever between the appellant and the Crown in Jamaica or the Crown in the United Kingdom, having regard to all the circumstances, the Registrar's direction is unreasonable.

(3) In the alternative, even assuming that the use of the word "Crown" in the appellant's name is undesirable because it implies a connection with the Crown, the fact is that there is an indirect connection between the appellant and the Crown.

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(4) (4) The Government of Jamaica does not object to the name of the Company and in fact is in favour of it. The Registrar is aware of the Government's stand.

(5) Hardship would be inflicted on the Company (the appellant) if the direction of the Registrar is allowed to stand.

In reply Dr. Rattray made a number of submissions. In the course of a lengthy and at times, interesting argument he cited several authorities and referred to Wade and Phillips Constitutional Law(8th Edit. p.171).

It is not out of disrespect if I say that I do not intend to refer to any of these authorities in the judgment. I have examined them all and in my view none of the authorities cited by him can assist me in this aspect of the matter. He was good enough, however, to bring to my attention a Gazette notice which appeared in the Jamaica Gazette of September 16, 1909 at p.804. I shall refer to it in due course. However, I extract the following points from the submissions of Dr. Rattray. They are as follows:

(1) The court should not substitute its own view for that of the Registrar unless the court takes the view that the Registrar's direction cannot be supported.

(2) The Company's Act makes it abundantly clear that whether or not a name is undesirable is essentially a matter for the judgment of the Registrar. The opinion of the Registrar should not be lightly disturbed.

(3) The Registrar should not allow Government economic policy to fetter his discretion when he genuinely believes that some section of the people may be misled or confused by

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the name of the company.

(4) The name of the appellant suggests a connection with the Crown in Jamaica or with the Government of Jamaica and on the admitted facts, neither the Crown of Jamaica nor the Government has any legal or equitable interest in the company.

(5) The Crown Agents and the Crown in Jamaica are separate. There is a wide difference between the Crown in England and in Jamaica although there may be a Common Queen.

(6) The onus of proof that the Registrar was wrong in holding that the name of the company is undesirable lies on the appellant and this has not been discharged.

Despite the force and eloquence in the arguments of Dr. Rattray I detect an inclination towards formalism and rigidity at the expense of reality and practical utility. If one should stick to extreme formalism and be too strict in approaching novel legal problems, the law will fail to be useful to the community. It would fail to assist in solving the conditions existing around us when a different approach would fulfil the expectation of the public in general.

The Handbook of Jamaica (1966) states as follows at p.431.

> "The Crown Agents are appointed by the Secretary of State for the Colonies and act as commercial and financial agents in the United Kingdom for Oversea Governments, Administrations and Public Bodies."

The Commonwealth Relations Office Official Year Book, 1963 12th Edit. p.84 states in part:

> "The Crown Agents are the officially appointed business and financial agents of a large number of Governments and public authorities. These include the Government

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of Bahrain, Ceylon, Cyprus, Ghana, Jamaica etc."

The Governor of the Bank of Jamaica, Mr. G. Arthur Brown in paragraph 3 of his affidavit dated April 28, 1971, states as follows:

> "the Crown Agents for oversea Governments and Administrations is an instrument of the British Government and is officially approved and recognised by such Government."

And Mr. Brown made it clear in his evidence when he was cross-examined by Dr. Rattray that the appellant's bank would not be keeping a current or savings account. It would not be dealing with the man in the street. In my judgment it is not necessary for me to enter the arid and disputable question how far, if at all, it can be said that the Crown may be regarded as one throughout the Commonwealth of which Jamaica is a member. Nor do I intend to enter into any debate on the question as to whether the Crown being the symbol of the Queen in England, it is also the same Crown as the symbol for "Her Majesty" as retained under our Constitution.

The fact of the matter is this. The Crown Agents have the right to that name in England. Jamaica recognises that appellation and uses the same Crown Agents in transacting business on behalf of the public. This has been going on for many years. The Crown Agents have an interest in the appellant's business and have given a part of its name to the appellant's name in order to show its participation in the venture which for years the Jamaican economy had been eagerly awaiting. There is nothing misleading or false about it.

On the facts, therefore, I hold that there is no ground whatever for the Registrar to conclude that the name adopted and under which a certificate of incorporation has been issued is undesirable within

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the meaning of Section 19 (3) of the Company's Act.

Indeed, Dr. Rattray made a concession, in anwwer to the court, which does not require any comment thereon. He conceded that if the name of the Company was "Crown Agents Continental Merchant Bank Jamaica Ltd.," the Registrar would not have considered the name to be undesirable because the name would clearly identify the true association of the Crown Agents with the Continental.

And even if I assume that the facts were not as I have outlined - and they have not been controverted - the Registrar could not summarily dismiss the view of the then Minister of Finance supported by the Principal Financial Adviser to the Government that the name of the Company is not undesirable. I shall explain why I take this view.

The Companies Act of 1965 came into force long after Jamaica attained Independence. Up to January 1, 1967, the Companies Law (Cap.69) was in force. Section 14 of the repealed statute prohibited generally the registration of a company under a name "calculated to decieve". Certain conditions were laid down where a subsisting company was being dissolved and a new company wished to adopt the name of the former. And under Section 15 power was given the Governor in Council to make rules with respect to the recording and registration of any memorandum of association for the incorporation of a company.

The Jamaica Gazette of the 16th September, 1909, at p.804, contains a rule made by the Governor in Privy Council under the then Companies Law. It states:

> "No Company shall be recorded in the Record Office under a name including any of the following words viz, King's, Queen's, Crown, Sovereign, Empire, Imperial or any other word suggesting Royal or

> Government connection, support or patronage without the consent in writing of the Governor in Privy Council, which shall be recorded along with the Memorandum of Association and the Articles of Association of the Company."

And the power conferred on the Governor in Council by section 15 (1) of the Companies Law - Cap.69 was transferred to the Minister on May 4, 1961 pursuant to the Constitution (Variation of Existing) Order, 1961. See Jamaica Gazette Supplemtnt dated April 20,1961.

If the appellant had sought registration of its name prior to January, 1, 1967 the consent in writing of the use of the word "crown" in its name by the Minister of Finance would be a sufficient authority for the Registrar of Companies to proceed with the registration of the appellant's name. The Minister of Finance is a member of the Cabinet and is the appropriate minister to advise the Governor-General in Council on all matters which touch and concern the economic development of Jamaica or the operation of banking interests. The opinion of the Minister that the use of the word "Crown" in the name of a Company formed for the purpose of operating a bank is not undesirable could not be challenged by the Registrar of Companies before January 1, 1967. Can the Registrar refuse to accept the view of Government on and after January 1, 1967 through the mouth of an appropriate minister i.e., for finance, trade and tourism or mines that a company formed for the purpose of pursuing some object which falls under his portfolio with the word "crown" as part of its name is not undesirable? I do not think so. Although the rule made in 1909 is no longer in force, it is my view that the Registrar of Companies would be required to seek the advice of the appropriate minister before he concludes whether a company's name containing one of the words in the "1909 rule" is

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is undesirable or not. And he should do this on the simple ground that it is for the appropriate member of the executive arm of Government to advise whether say "Crown" "Sovereign, or "Royal" is or is not undesirable in a given state of facts. The Registrar of Companies is not the sole abiter in such a situation . The former right or power of the Governor-General in Council under the rule has not been transferred to the Registrar. And even if it were to be argued that he now has a say in the matter, it is my view that the Government's opinion could only be rejected by him for cogent and sufficient cause. Section 19 (3) of the Act must be construed on the background of the long history and practice in connection with the use of certain words in a company's name. This new power given to him must be used judiciously. The Registrar of Companies was not transformed over-night into a miniature Caezar by the 19th Section.

The power conferred on the Registrar of Companies by Sec. 19(3) of the Act to call upon a registered company to change its name should be used very sparingly and only on clear and reasonable grounds. I shall give about two or three examples where reasonable grounds could exist.

(1) Where on registration a genuine error was made by the Registrar in accepting a name which is identical with another name on the register or is too closely similar to another name thereby causing or encouraging confusion.

(2) Where a company has ceased a part or the whole of its activities and its name does not properly reflect its new business. For example, if Pig Farms Ltd., has stopped rearing pigs and launches into the manufacture of Fabrics and women's wigs.

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(3) Where it can be shown that the name of the Company has become misleading in such a manner that there is the likelihood of harm being caused to the public.

The clear object of the power is to protect the public from any pretention, false or misleading suggestion, or of something which savours of confusion or deception.

"Whats in a name? that which we call a rose,
By any other name would smell as sweet."
(Romeo & Juliet, Act 2. Sc.2").

I believe that this dialogue has no application to a company's name. A sweetly smelling or sweetly calling name may lead the unsuspecting into ruin or it may be a mask for the practise of fraud. This is where the Registrar could properly go into action and wisely use his power.

Before I make a brief reference to the question of costs, I shall summarise briefly why, in my view, the appellant was bound to succeed in this appeal.

Summary of Reasons

(1) The Registrar of Companies may call upon a Company to change its name if he thinks that the registered name is undesirable. But the Registrar may withdraw his direction or suspend it during the period allowed for the Company to appeal against the order. If the Registrar, having considered the matter further, is still of the same opinion, time will run as from the date he decides, after further reflection, that the original direction should stand. He must do nothing which could

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be construed as a trap being laid to impede the Company in the judicial process and must show every sign of being logical, fair and strong.

(2) Where a Company has been registered under a certain name, there is a prima facie evidence that that name is not undesirable;

(3) Where a registered name is considered to be undesirable there must be good reasons for this opinion. And the Registrar should be strong enough to give his reasons to the Company in his notice directing a change of name;

(4) Where objection is taken to the use of the word "crown", "Royal" or anything suggestive of Governmental (Local or Central) patronage, the Registrar should seek the advice of the appropriate Minister under whose portfolio the activity of the Company would fall. Respect should be given to the view of the Minister concerned unless there is good reason to hold otherwise.

(5) If the name of a Company is factually true in so far as it concerns the promoting interests or the proposed activities, there is prima facie evidence that no one would be misled by the name and there would be nothing falsely suggestive of its operation. But the question of whether confusion would be caused because of similarity in the name of another existing company would fall for consideration.

(6) The power conferred on the Register under Section 19 (3) of the Act should be used sparingly and where there is a reasonable doubt, it should be resolved in favour of the

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Company having regard to the financial loss, loss of goodwill and the disruption in the Company's arrangements which will be bound to follow any order that a registered name should be changed.

Question of costs

Mr. Williams asked for costs. I did not allow it. It has not been shown that the Registrar did not act bona fide. It was not suggested that he acted under any other motive than an attempt to do what he believed to be his duty. It could be that it was discovered that the Acting Registrar (who did not file an affidavit in the proceedings) made a blunder in asking the Company to change its name in the first instance. But perhaps it was further considered that it was a "blunder" which was based on a ground which should await the Court's ruling. Mr. Glasgow, in his affidavit, hinted that the Registrar acted under legal advice. No public officer who genuinely acts under legal advice should be penalised. The legal advice tendered to the Registrar in this case was clearly wrong. However, it appears that the Registrar was convinced that the advice was sound and that in all the circumstances his stand was maintainable.

I believe that this case is the first to be taken against the order of the Registrar under Sec.19 (3) of the Act and in all the circumstances, I was, and still am, of the opinion that no order for costs should be made.

U.N. Parnell
(Puisne Judge).