

SAINT VINCENT.

IN THE HIGH COURT OF JUSTICE

(CIVIL)

SUIT NO. 130 of 1973.

In the matter of an application by O'Neill
Newsan Mc Intosh for an order of Mandamus.

and

In the matter of an application by the said
O'Neill Newsan Mc Intosh to the Registrar of
joint stock Companies for a certificate of
incorporation that a Company by the name of
"Health Services Limited" was duly incorporated
on the 7th day of May, 1973, and that the
said Company is limited.

E.A.C. Hughes for applicant.

M. Joseph, Legal Assistant for respondent.

1973 July 2.9.

JUDGMENT.

BERRIDGE .J.

The applicant, O'Neill Newsan Mc Intosh of
Indian Bay, Saint Vincent, a company director,
seeks an order of Mandamus directed to the Registrar
of Joint stock Companies commanding her forthwith
to certify under her hand that a Company by the
name of "Health Services Limited" was

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duly incorporated on the 7th day of May, 1973,
and that the said Company is limited, leave of
the Court to apply for such an order having been
granted to the applicant on the 21st June, 1973.

The grounds upon which the relief is sought
are that-

- (a) Early in May, 1973, the Memorandum and Articles of Association of a Company to be called "Health Services Limited" signed by the Applicant and six other persons were delivered to the Registrar of joint stock Companies for registration pursuant to the provisions of Section 14(1) of the Companies Act, Chapter 219.
- (b) On the 7th day of May, 1973, the fees required to be paid by the said Act were paid to the Registrar of joint stock Companies and a proper and valid receipt was obtained for the same.
- (c) The said Registrar of joint stock Companies has, since the 7th day of May, 1973, without lawful justification or excuse, refused to issue a certificate of the incorporation of the said Company as she is required to do by Section 15(1) of the Companies Act, Chapter 219.

On the 8th May, 1973, the Registrar of joint stock Companies (hereinafter referred to as the Registrar) addressed a letter to the Solicitor for the applicant expressing her inability to register the Company in the absence of a licence from the Governor as the name of the Company implied Government patronage or support.

A further exchange of correspondence terminated with a letter dated 25th May, 1973, from the Registrar who, having in the meantime sought legal advice, confirmed that she was unable to register the Company for the aforementioned reason.

Counsel for the applicant contended that-

- (a) the memorandum of association and articles of association were registered and that thereafter, in compliance with section 15 of the Companies Act, Cap. 219 (hereinafter referred to as the Act), the issue of the certificate was compulsory.
- (b) the application fell within the *ejusdem Generis* Rule.

/(c).....

(c) on a clear meaning the title of the Company did not infringe the provisions of the Act.

Section 14(1) of the Act provides for the delivery of the memorandum of association and the articles of association, if any, to the Registrar, who shall retain and register the same while section 14(2) prescribes the fees payable to the Registrar by a Company.

It is convenient at this stage to set out in extenso the provisions of sections 15(1) and 17(1).

"15(1) Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the Company is so incorporated, and in the case of a limited company that the Company is limited."

"17(1) No company shall be registered-

(a) Under or shall make use of, any name or title, including "Queens" "Royal" or "Crown" or any other name which

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might convey the suggestion of Royal or other Government patronage or support, unless the Governor shall, by writing under his hand, have previously given his licence in that behalf."

The receipt issued to the applicant's solicitor is dated 7th May, 1973, and reads as follows:-

"Received this day from E.L.C. Hughes the sum of Two hundred and forty two dollars and forty cents for registration of Company Health Services Ltd 240.00 fl of address 1.20 fl memo & articles of assoc. 1.20.

Angela Prince
for Accountant General."

Counsel for the Respondent contended that the mere receipt of the fees from the company did not mean that registration of the memorandum of association and articles of association/ automatically followed and in support of that contention Counsel quoted section 9(1) of the Registrar's Ordinance Cap. 149 L which provides that it shall be the duty of the Registrar to demand and collect all fees payable to that officer before the

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acts, in respect of which they are payable, are performed.

This argument is sound up to a point and had the Registrar stopped at acceptance of the memorandum and articles of association plus the receipt of the due fees that may well have been a complete answer to this application.

In the instant case, however, not only have the memorandum of association and the articles of association been duly delivered to the Registrar, but the name of Company was entered in the Register of Companies on the 7th May, 1973, and a serial number assigned to the Company.

The question to be determined is what constitutes registration of the memorandum of association and articles of association?

It does not appear that there is any specified book or register in which these documents are formally recorded but the entry of the name of the Company in the Register of Companies constitutes registration of the Company which is inconsistent with the rejection.....

jection of the vital documents upon which the existence of the Company depends, one of which provides, inter alia, for the very name of the Company.

I find therefore that simultaneously with the registration of the Company the memorandum of association and articles of association of the Company were registered on the 7th day of May, 1973, and that the Registrar is obliged to issue a certificate of incorporation of the said company in accordance with the provisions of Section 15(1) of the Act.

Assuming, however, that there is merit in the contention that the memorandum of association and articles of association were not duly registered I will turn to the second limb of argument put forward by Counsel for the applicant.

R. v Edrundsøn [1859] 2 E & E 77 is authority for saying that where there are general words following a specific enumeration, the general words must be confined to subjects ejusdem generis as those specified or, to put it in another way, when general words follow specific words previously enumerated, they must be construed to mean something of the

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same kind which went before; and for the ejusdem generis rule to apply the specific words must constitute a category, class or genus: if they do constitute such a category, class or genus, then only things which belong to that category, class or genus fall within the general words.

In *Brownson Hyvon Properties Ltd v Poole Corporation* [1958] 1 All E. R. 205, a case on which Counsel for the applicant relied, a local authority, purporting to act under powers enabling it to make "orders for the route to be observed by all carts, carriages, horses and persons, and for preventing obstruction of the streets.....in all times of public processions, rejoicing or illuminations, and in any case where the streets are thronged or liable to be obstructed....." made an order dated March 5, 1957, which in effect created a one-way traffic system in two adjoining streets within the district of the local authority for all vehicles for a period of six months from April 19, 1957, to October 19, 1957, for the reason that during certain seasons of the year the streets in question were

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thronged and liable to be obstructed.

It was held that the words "and in any case" should be interpreted ejusdem generis and limited to cases of the same class or genus as the three preceding instances viz. "public proceedings, rejoicings, or illuminations" and thus were confined to particular and extra-ordinary occasions and did not enable an order for such a continuous period as from Apr.19, 1957 to Oct. 19, 1957 to be made.

Rex v Registrar of Companies; Paul and others, Ex parte [1912] Vol. 81 K.B. D. 914 cited by Counsel for the respondent is not really in point in that there the refusal of the Registrar of Companies to register the Company was based on the ground that the name so nearly resembled that of a company already on the register and the question under consideration was whether the Registrar has exercised his discretionary powers.

Nevertheless the following relevant principles enunciated in that succinct judgment of Ivory J are of interest and equally applicable in this case:-

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"I think that in order to displace the decision of the Registrar and to justify this Court in interfering by Mandamus, the applicants must show one or more of three things-either that the Registrar has not in fact exercised any discretion in the particular case, or that he has exercised it on some wrong principle of law, or that he has been influenced by extraneous consideration which he ought not to have taken into account. One of these three things must be made out to justify this Court in interfering by Mandamus".

I am of the opinion that the words "Health Services Limited" are general words and cannot be construed to mean something of the same kind adumbrated by the specific words contained in Section 17(1) of the Act. In short the name "Health Services Limited" does not convey the suggestion of Royal or other Government patronage or support.

Douglas Huggins, Acting Permanent Secretary
in the Ministry of Health, Housing and Local Government, produced in evidence a communication to him dated 16th February, 1973, from the Cabinet Secretary relating to a medical matter and headed "Health Services" which words he opined relate to the entire Medical and Health Services of the State.

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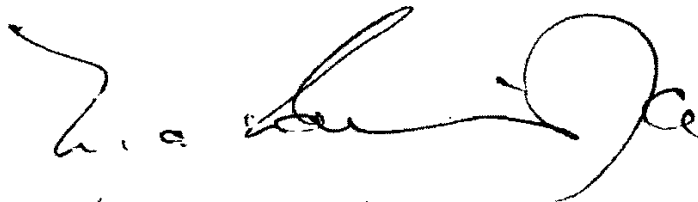
The witness also went on to state that he knew of two instances where health services were provided by medical men though they were not registered under the Companies Act. The expression "Public Health", in his view, indicated a health service run by Government as in the case of an organisation once known as the "Public Health Engineering Unit".

The ejusdem generis rule apart, I am of the opinion that the words "Health Services" do not convey the suggestion of Government patronage or support and the heading assigned to an inter-departmental communication does not alter the position.

The application is accordingly granted. There will be an order of Mandamus directed to the Registrar of joint stock Companies requiring her on or before the 11th July, 1973 to certify under her hand that a Company by the name of "Health Services Limited" was duly incorporated on the 7th day of May, 1973, and that the said Company is limited.

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The Respondent will pay to the Applicant the costs of, and incidental to, this application to be taxed in default of agreement.

A handwritten signature in black ink, appearing to read 'N.A. Berridge'. The signature is fluid and cursive, with a large loop at the end.

(N.A. BERRIDGE)

Puisne Judge.