MULTINATIONAL GAS AND PETROCHEMICAL COMPANY, Appellant, *v.* CRYSTAL STEAMSHIP CORPORATION, S.A., et al., Appellees.

APPEAL FROM THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued June 6, 1978. Decided June 30, 1978.

1. Where the jurisdictional requirements of an appeal have been completed within the statutorily prescribed period of time and the trial records have been transmitted to the Supreme Court, the appellant may prosecute, and the Supreme Court may hear, and appeal at any term of court, even before the term to which an appeal was announced.
2. Where articles of amendment of a corporation to subject it to the new Associations Law were filed before the articles of dissolution were filed, the corporation may properly proceed with dissolution under the statute.
3. It is not the province of the courts to construe legislation where the meaning is plain.
4. Chapter 11 of the Association Law, Rev. Code, Title 5, relating to dissolution of a corporation, is applicable to both solvent and insolvent corporations.
5. The trustees engaged in winding up the affairs of a dissolved corporation may appoint an agent to act for them in accomplishing the details of the work.
6. It is error for a judge to uphold allegations of fraud where no evidence is adduced to establish their truth.
7. All issues of law raised in the pleadings must be disposed of by the trial court before it considers questions of fact.

The appellant Multinational Gas and Petrochemical Company filed articles of dissolution with the Ministry of Foreign Affairs on the day following the filing of articles of amendment which would subject the corporation to the new Associations Law of 1976. The trustees-in-dissolution appointed by the shareholders designated a law firm as legal advisers and began the winding up of the corporate affairs. The three appellee corporations filed separate caveats against the dissolution, and Multinational then petitioned the Circuit Court for permission to continue liquidation under the court's supervision. The Circuit Court denied the petition as

well as appellees' petition to consolidate the petition to continue dissolution and appellees' petition for a declaratory judgment to declare the dissolution invalid.

On appeal to the Supreme Court, appellees moved to dismiss the appeal on the ground that the Circuit Court ruling was interlocutory. The motion was denied. On the hearing of the appeal, the Supreme Court considered four counts in appellant's bill of exceptions, and held that Multinational was proceeding properly in dissolution under chapter 11 of the Associations Law of 1976, which applied to insolvent as well as solvent corporations; that the details of liquidation had been properly entrusted by the trustees to an agent; and that allegations of fraud by appellees should have been given no weight by the lower court in the absence of any evidence to support them. The *judgment* of the Circuit Court was *reversed.*

Toye C. Barnard, Moses K. Yangbe, and *S. Edward Carlor* of the Henries Law Firm for appellant. *Lawrence A. Morgan* and *Beauford Mensah* of the Morgan, Grimes and Harmon Law Firm for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.

The appellant, Multinational Gas and Petrochemical Company (Multinational), a nonresident Liberian Corporation, was incorporated on August 14, 1970, with an office at 80 Broad Street, Monrovia, Liberia, and with the International Trust Company of Liberia as its registered agent. Its principal business was to engage in worldwide shipping and trading of liquified petroleum gas. The original subscribers to the articles of incorporation subsequently assigned their respective shares to three corporations, namely: Bridgestone Liquified Gas Company Ltd. (Bridgestone); Phillips Petroleum Company (Phil-

lips); and Societe Anomyme de Gerance et d'Armement (SAGA).

Apparently as a result of Multinational's not being able to survive the depression in the crude oil tanker market, the shareholders resolved on September 27, 1977, to amend the corporation's articles of incorporation so as to subject it to the new Associations Law of 1976. On the following day, the shareholders passed a resolution authorizing the dissolution of Multinational. The articles of amendment were executed on September 30, 1977, and presented to, accepted by, and filed with the Ministry of Foreign Affairs on October 5, 1977. The articles of dissolution were also executed on September 30, 1977, and presented to, accepted by, and filed with the Ministry of Foreign Affairs on October 6, 1977.

After the execution of these articles, the directors of Multinational resigned, and in their place Messrs. Ian G. Watt, William L. Hall, and George P. McNaught were elected. As trustees-in-dissolution they were given by the shareholders an indemnity against expenses or liability they might incur; and they in turn appointed Mr. Peter Totty and his law firm of Cameron Kemm Nordom to act as Multinational's legal advisers. After the filing of the articles of dissolution, the process of winding up the company's affairs began. A meeting of the company's larger creditors was held; informal committees of secured and unsecured creditors were set up; and a circular giving details of the company's financial position and asking for the submission of claims, was sent to all known creditors of Multinational.

The appellees, Crystal Steamship Corporation (Crystal), Global Gas Transport Inc. (Global), and Reliance Gas Transport (Reliance), filed separate caveats in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Subsequently, Multinational filed a petition in the same court for permission to continue the liquidation under the court's protection and

supervision. In addition the petition requested court order to stay the institution of multiplicity of law suits in Liberia against the company's assets; and instructions by the court regarding the distribution of assets and the notification of creditors. The trustees-in-dissolution also offered to submit written progress reports on the liquidation to the court.

After the filing of the petition, the appellees filed a petition in the same court for a declaratory judgment, asking the court to declare the dissolution invalid and to interpret chapter 11 of the new Associations Law of 1976. The appellees also moved the court to consolidate the petition to continue liquidation and the petition for a declaratory judgment. The lower court presided over by His Honor Judge James L. Brathwaite denied the motion, and began the hearing on issues of law raised in the petition to continue liquidation. After hearing arguments, the court denied the petition in a twenty-seven page ruling, and from this ruling an appeal was taken by the appellant to this Court.

When the case was called for hearing, the appellees moved to dismiss the appeal on the ground that the ruling from which appeal was taken was interlocutory. In ruling on this motion we dismissed it on the following grounds: that (1) no statutory ground for the dismissal of an appeal was laid in the petition; and (2) "the contention that the ruling is interlocutory is not in harmony with the text of the decision made by the judge after he had reviewed the issues on both sides, when he stated that 'in view of the foregoing it is the considered opinion of this court, that the petition of the petitioner be negated and denied.' The judge had thereby finally determined the petition and had denied the prayer contained therein. His subsequent instructions as to what should be done with respect to the said denied petition were inconsistent with the decision he had already announced. Moreover, his subsequent comments on the

merits or demerits of the denied petition did not revoke the finality of his pronouncement denying the petition; and according to our procedure and practice, appeal will lie from a final decision or ruling."

After the denial of this motion we proceeded to hear the appeal. Before traversing the counts in the bill of exceptions, we might mention in passing that, after rendition of the final judgment on March 7, 1978, the appeal was taken to the October 1978 Term, and, upon the request of the appellant, the case is being heard in the March 1978 Term. This is not a novelty in the practice before this Court, neither is it an exception to the rule. In the first place there is no law or rule of court which bars the hearing of an appeal by this Court at any time after the jurisdictional steps have been completed and the records of the trial court have been transmitted to this Court. Where the jurisdictional requirements of an appeal have been completed within the statutorily prescribed period of time and the trial records have been transmitted to this Court, the appellant may prosecute, and this Court may hear, an appeal at any term of court, even before the term to which an appeal was announced. *Nah* v. *Nah*, 17 LLR 357 (1966); *Carew* v. *Jessenah*, 13 LLR 103 (1957).

The appellant has filed a bill of exceptions containing nineteen counts, and those necessary for the determination of this matter are hereby traversed as follows:

(1) The appellant contends that the trial judge erred in ruling that the procedure used for the dissolution of Multinational was void and of no effect, in that if the corporation was seeking dissolution under the Associations Law of 1976, it could not execute articles of dissolution prior to the filing of the amendment. At this juncture it might be necessary to review the steps taken toward dissolution, and they are as follows: On September 27, 1977, the shareholders of Multinational passed a resolution to amend its articles of incorporation

so as to subject it to the Associations Law of 1976; on September 28, the shareholders passed a resolution to dissolve Multinational; on September 30, the articles of amendment and the articles of dissolution were executed; on October 5, 1977, the articles of amendment were filed with the Foreign Ministry; and on October 6, the articles of dissolution were filed with the Ministry. In effect, the judge upheld the appellee's contention that Multinational should not have executed the articles of dissolution until after it had filed the articles of amendment.

Let us now look to the Associations Law of 1976, Rev. Code, Title 5. Section 1.3(1) provides, among other things, that "any domestic corporation created prior to the effective date of this Act may at any time subject itself to the provisions of this Act by amending its articles of incorporation in accordance wtih the manner prescribed by chapter 9." Section 9.3(1) states the procedure for amendment, and it provides that "amendment of the articles of incorporation may be authorized by vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders or by written consent of all shareholders entitled to vote thereon." Section 9.6(1) provides that "upon filing of the articles of amendment with the Minister of Foreign Affairs, the amendment shall become effective as of the filing date stated thereon and the articles of incorporation shall be deemed to be amended accordingly." It is clear that for the Multinational, having followed the procedure prescribed by statute for subjecting it to the Associations Law of 1976, the amendment became effective as of October 5, 1977.

In order to dissolve a corporation, the holders of two-thirds of all outstanding shares entitled to vote shall by resolution consent to the dissolution; a certified copy of such resolution, together with the articles of dissolution, shall be signed, verified and filed with the Minister of Foreign Affairs; and dissolution shall become effec-

tive as of the filing date stated in the articles of dissolution. Associations Law, Rev. Code 5:11.1(1), (3), (4). Again it is clear that these statutory requirements were met by Multinational. While it is true that the articles of dissolution were executed before the filing of the amendment, the mere execution of the articles of dissolution without more did not clothe Multinational with authority to dissolve. It was only after the filing of the articles of dissolution with the Ministry that the wishes of the shareholders could be carried out. The articles of amendment having been filed, followed by the filing of the articles of dissolution, it is our opinion that Multinational had properly put itself in position for dissolution under the new Associations Law. The mere filing of articles of dissolution does not fully dissolve an existing corporation; it must first lawfully dispose of its assets and do all other acts required to adjust and wind up its business, and it may sue and be sued in its corporate name. The appellees placed much stress on the articles of dissolution being a one-page document; the reason for this is not clear. All the articles of dissolution are legally required to contain are: the name of the corporation, the date its articles of incorporation were filed with the Ministry of Foreign Affairs, the name and address of each of its directors and officers, that the corporation elects to dissolve, and the manner in which the dissolution was authorized. Associations Law, § 11.3.

(2) The appellant also contends that the judge erred when he ruled that chapter 11 of the new Associations Law was not intended to apply to insolvent corporations. Since the judge admitted that he found no legislative history or judicial precedent on the subject, we have not been able to understand how he arrived at his ruling in face of the plain wording of the statute. Throughout the chapter on dissolution, there is no reference to solvency or insolvency of a corporation; rather the sections of the chapter speak about "a corporation." The statute is not

ambiguous so there is no need to construe it. It is not the province of courts to add or subtract from legislation where the meaning is plain. *George* v. *Republic*, 14 LLR 158 (1960); *Roberts* v. *Roberts*, 7 LLR 358 (1942). In *Buchanan* v. *Arrivets*, 9 LLR 15 (1945), we held that as a general rule, where the Legislature has made no exceptions to the positive terms of a statute, the presumption is that none was intended, and a court will not introduce an exception by construction except where it is absolutely necessary and where absurd or manifestly unjust consequences would otherwise result.

The appellees support the judge's ruling on the ground that the Liberian statute is similar to the New York statute on dissolution. In the first place, the similarities are not that many, and they exist with respect to only a few sections of the New York Business Corporation Law. See Articles 10 and 11, *McKinney's Consolidated Laws of New York*, Business Corporation Law (1963). In the second place the case relied upon does not justify the judge's conclusion. In *Willey* v. *Diepress Co.*, 156 Misc. 762, 281 N.Y.S. 907 (1935), it was held that section 105 of the New York Stock Corporation Law relating to dissolution of corporations without judicial proceedings contemplated dissolutions of solvent corporations. With respect to this citation, the instant case involves judicial dissolution which is the basis of the petition filed in the lower court; and furthermore no effort was made to show that section 105 of the Stock Corporation Law in 1935 is similar to the present New York statute or to the Liberian statute.

In *Steinhardt Import Corporation* v. *Levy*, 174 Misc. 184, 20 N.Y.S. 2d 360 (1940), the New York court held that section 105 does not manifest an intention to contemplate dissolution of only solvent corporations. Also in *In re Flexlite Corporation*, 43 N.Y.S. 2d 948 (1943), it was held that the statute was applicable to both solvent and insolvent corporations since there was no express

provision in the voluntary dissolution statute which excluded insolvent corporations. Under the circumstances appellant's contention must be sustained.

Closely intertwined with this issue is another contention raised by the appellant, and that is that after denying the appellees' motion to consolidate their petition for a declaratory judgment and appellant's petition to continue liquidation, the judge denied the motion and went on to rule on both petitions. Recourse to the records shows that no definite pronouncement was made by him either granting or denying the motion, but it could be implied that the motion was denied because the judge ordered that the petition to continue liquidation of Multinational be proceeded with since "the petition for declaratory judgment is of an academic nature." The judge should have been definite in his ruling on the motion, and, if the motion was in fact denied, he should not have passed on any issues raised in the petition for a declaratory judgment. Unfortunately, this petition was not among the records certified to this Court and therefore we cannot say anything more about it.

(3) The appellant contends further that the trial judge erred in holding that trustees-in-dissolution cannot delegate their powers to an agent, and therefore the power of attorney issued to Peter Totty is invalid. Under section 11.4(2) of the Associations Law, provision is made for the directors to serve as trustees to settle the affairs of the dissolved corporation, collect outstanding debts, sell and convey property, prosecute and defend all suits that are necessary or proper, distribute money and property among shareholders after paying liabilities and obligations, and perform all acts necessary for the final settlement of the unfinished business of the corporation. The trustees become the legal representatives of the corporation, and in them is vested the legal title to the corporate property. Thus the property and rights of the dissolved corporation constitute a trust fund to be administered by

the trustees, their duties being expressly defined by statute. 19 AM. JUR. 2d, *Corporations*, § 1677 (1965).

In corporate practice, the trustees of a dissolved corporation should act as a group and not individually; but they may appoint agents to perform the detail work in winding up the corporate affairs or they may delegate authority to one of the trustees to act for them. Ordinarily, where the directors are designated by statute to wind up the corporation's affairs, the method selected by the directors to do so will not be disturbed by a stockholders' suit unless it can be shown that the method selected would bring about a loss which would not otherwise have to be borne by the stockholders. 19 AM. JUR. 2d, *Corporations*, § 1679 (1965); 97 A.L.R. 477, 488 (1935). It having been established that the trustees could appoint an agent, it follows then that the special power of attorney given to Peter Totty was in order, and that he could exercise the powers contained therein in keeping with law.

(4) The appellant contends too that the trial judge erred because, while passing on the issues of law, he also passed upon the following factual issues without hearing evidence: (a) that the entire process relating to the formation of Multinational was designed by the shareholders to defraud; (b) that the shareholders of Multinational caused it to engage in fraudulent acts and deliberate misrepresentation; (c) that the corporation was grossly undercapitalized; (d) that the indemnification of the trustees limited their actions; (e) that the signing of the petition to continue liquidation was an attempt to deceive the court or perpetrate fraud upon Multinational's creditors; and (f) that the petition was filed in bad faith. These are all allegations made by the appellees, and the responsibility for proving them rested squarely on them. The judge in his ruling agreed with the allegations without receiving a scintilla of evidence, and did so in what he regarded as his ruling on the legal

issues. We have often held that allegations are not proof; rather they must be sustained by evidence. *Hill* v. *Hill,* 13 LLR 257 (1958); *Jogensen* v. *Knowland*, 1 LLR 266 (1895).

With respect to the averments of fraud, the Civil Procedure Law, Rev. Code 1:9.5(2), requires that they be stated with particularity, and not in a broad sweep as was done by appellees in their resistance. Where fraud is alleged, every species of evidence tending to establish the allegation should be adduced at the trial; otherwise a judgment in favor of the party alleging it will be reversed. *Henrichsen* v. *Moore*, 5 LLR 60 (1936). Moreover, the question of fraud in the formation of a corporation is one which usually comes within the purview of the Minister of Justice, who could bring an action to dissolve the corporation on that ground.

The legal requirement that issues of law must be decided before issues of fact is as old as the history of this Court, and is one which every judge should be conversant with. Our law reports are replete with holdings on this point. *Korla* v. *Korla*, 22 LLR 54 (1973); *Williams* v. *John*, 1 LLR 259 (1894). It is clear that the trial judge did err in deciding these factual issues simultaneously with the legal issues, and particularly without the aid of evidence.

As stated earlier, the appellant's bill of exceptions contained numerous counts, but it is our opinion that we have dealt with the more important ones. Quite a few of the errors complained of arose as a result of the trial judge's interjecting them into his ruling without their having been raised by either party, even though we have repeatedly held that it is erroneous for the judge to determine issues not raised in the pleadings. We insist upon this, for to hold otherwise would tend to put this Court in an awkward position of having to assume original jurisdiction over, and review, issues not pleaded and decided in a subordinate court. *Pennoh* v. *Brown*,

15 LLR 237 (1963). Under the circumstances we find ourselves unable to review the other interesting issues raised in the briefs, although we would like to do so.

In view of the foregoing, the judgment of the lower court denying the petition to continue the liquidation of Multinational under the supervision of the court is reversed with costs against the appellees. And it is hereby so ordered.

Judgment reversed.