

RE KRAUSE & PREUSS (In Liquidation),
PAUL v SAMOAN PUBLIC TRUSTEE

High Court Apia
20 August 1927
Woodward C.J

PRACTICE AND PROCEDURE - Action by Administrator of estate of deceased partner against Liquidator of deceased's firm - Court setting aside balance-sheet as incorrect and ordering taking of accounts - Motion by Liquidator to establish true balance-sheet and for consequential directions held permissible in circumstances where all interested parties were represented on the motion and there was no disagreement pertaining to the balance-sheet. Order made accordingly.

WOODWARD C.J. This is a motion for directions by the Samoan Public Trustee as Liquidator of the former German firm of Krause & Preuss GmbH. The Public Trustee is interested in the three capacities of Liquidator of the firm, Administrator of the Estate of the late Mr. Preuss, and Receiver of Enemy Property under the Ex-enemy Absentee Property (Samoa) Order, 1923, and by direction of the Court he is represented by separate counsel in each of these three capacities.

The facts need not be reviewed. They are set out in the affidavits and are not disputed.

The form of proceedings, viz., by motion, is, I think, permissible under the circumstances. An action was taken in 1922 by the former Administrator of the Estate against the Samoan Public Trustee as Liquidator to have the firm's balance-sheet of 8 August, 1914 set aside or amended and in that action on 25 July, 1922 the balance-sheet was declared to be not a true balance-sheet as against the Administrator of the Estate. It appears to me that if it was competent to the Court to set aside the balance-sheet as between the Liquidator and the Administrator in that action it must also be competent to it in the same action to establish a true balance-sheet as between these parties. The sole shareholder and the two other parties interested in a minor degree in the revision of the balance-sheet, Holzeit and the firm of Koper Docke, are Ex-enemy Absentees, whose interests have since the action was begun passed into the hands of the Samoan Public Trustee under the Ex-enemy Absentee Property (Samoa) Order, 1923. Those interests are therefore represented in these proceedings. The balance-sheet sought to be established is a result of a taking of accounts under Order of the Court of 2 May, 1922 in the said action. It is signed as correct by two accountants, Messrs. Halliday and Collins, who represented at the time of signature the Administrator of the Estate and the Liquidator of the firm, respectively, as well as by Mr. Tennant before whom the accounts were taken. The correctness of the new balance-sheet is also admitted by counsel for the Samoan Public Trustee as Receiver.

Under these circumstances that all interested parties are represented and that the balance-sheet and all the facts are agreed on, I think the questions asked may be determined on motion.

The following Order made on paragraph (1) of the motion follows from the agreed facts:-

- (a) that the Samoan Public Trustee as Liquidator of the firm of Krause & Preuss accept as true and proper for the purpose of settlement with the Estate of the deceased Preuss the balance-sheet approved of and passed by Mr. Tennant 24 July, 1922.

The item War Account No. 2 M.12705.25, which in the taking of accounts was disputed by the Administrator of the Estate and was left in abeyance, is now admitted as being correct and remains in the balance-sheet accordingly.

On paragraph (2) of the motion an Order is made:-

- (b) that the Samoan Public Trustee as Liquidator pay or transfer

to the Estate such further sum as is necessary to make up the total sum paid to the Estate equal to the sum shown in the now established balance-sheet as the true total of the liability of the firm to the Estate.

As to paragraph (3) of the motion, the money deposited with the firm by the Estate was by agreement to carry interest at 10%. Interest at that rate can be claimed only to date of liquidation. An Order is made:-

- (c) that the Samoan Public Trustee as Liquidator pay or transfer to the Estate interest at 10% from 8 August, 1914 to 30 April, 1916 on the sum specified in paragraph (b).

As to paragraph (4) of the motion, it appears that German law (paragraph 288 of the Civil Code), which was in force here until 1 May, 1920 entitled the Estate to 4% interest upon such part of the sum specified in paragraph (b) as was payable before that date. The 7/- dividend in the firm's liquidation was paid on 23 March, 1917 and the final 13/- dividend was not paid until after 1 May, 1920. I must, I think, assume that the dividends were duly paid in point of time, and therefore the 4% interest will be payable only on 7/20 of the sum specified in paragraph (b). An Order is made:-

- (d) that the Samoan Public Trustee as Liquidator pay or transfer to the Estate interest at 4% per annum on 7/20 of the sum specified in paragraph (b) from the 23 March, 1917 to date of payment or transfer.

Costs of this motion will be paid by the Liquidator out of the funds of the Liquidation as follows:- counsel for the Liquidator, 15 guineas; counsel for the Estate, 15 guineas; and counsel for the Receiver of Enemy Property, 5 guineas - in each case with disbursements.