

**In the matter of an application by THE RHODESIAN RAILWAYS,
LTD., for an Order of Mandamus.**

HIGH COURT CIVIL CAUSE NO. 28 OF 1941.

Mandamus—when granted—Valuation Court.

A writ of mandamus will be granted when the Court considers that it is necessary in the interest of justice and that this is the only method available to the applicant to obtain justice. The facts leading up to this application are fully set out in the judgment reported below.

Robinson, J. This is an application for an Order of Mandamus that the Resident Magistrate, Ndola, do hear and determine the objections of the applicant (The Rhodesia Railways, Ltd.) to the valuation of its property in the Luanshya Township under O. 59 r. 3 (2) of the Rules of the Supreme Court of England.

The facts leading up to this somewhat remarkable state of affairs are as follows:

In August, 1940, the Luanshya Township Board resolved that a valuation be made of all property in the township and appointed Mr. Streeter of Ndola, a qualified architect, to be valuer. The authority for this is Cap. 26 of the Laws of Northern Rhodesia. The whole procedure is set out in section 23 *et seq.*

Mr. Streeter duly entered into the declaration required by section 26A on 11/2/41. He wrote to the applicants asking them to ascertain the cost of all property belonging to the company in the Luanshya Management Board area which was assessable under the Ordinance. Correspondence went on, the applicants apparently not taking the valuation at all seriously, judging from the procrastination and delay. On 7/4/41 the applicants announced that they would be prepared to provide the depreciated values as shown in their books, of buildings, etc., if the valuer would furnish a list of them. This list was furnished on 23/4/41. Nothing further happened for a month and the township board naturally wanted to get the valuation roll approved and the rates levied. Mr. Streeter was forced to put his own valuation on the applicant's property as no figures could be extracted from the applicants. The valuation roll was completed and the formalities required by section 26D were complied with. The roll was laid in the office for inspection on 30/5/41 and the valuation Court was fixed for 23/6/41.

Section 26F clearly lays down the procedure of how to object to values—notice in writing must be given six clear days before the date appointed for the holding of the Court.

On 18/6/41 (less than six clear days) the applicants produced the figures called for by the valuer on 11/2/41 and more specially defined in his letter of 23/4/41. The valuer had asked for those figures as a foundation for his valuation. The figures consist of seventeen items presumably the depreciated values as shown in the applicant's books. How it took eight weeks for the applicants to copy them out is difficult to understand and it is not unfair to suggest that if the valuation roll had not been completed and laid in the office for inspection on 30/5/41 the figures might not have been produced then. Of course the valuer had no opportunity of studying and considering the values put upon this property by the applicants and this was not his fault but the fault of the applicants. At the hearing a representative of the railway appeared and said he wished to object to the values in the valuation roll of the railway properties and said further that the railways were objecting to some of the valuations to the land, entirely new matter. The method of objecting is set out in section 26F of Cap. 26 and was not complied with. Even at that stage when the Court was actually sitting, it was not clear what the objections were, quite apart from the legal necessity for the objections to be sent in in writing six clear days before the hearing. The learned Magistrate exercised his discretion and refused to hear the applicants, as he was perfectly entitled to do. At a later stage he was asked to review his decision under O. 35 r. 2 of the Subordinate Court Rules, but he properly came to the conclusion that the procedure laid down in Cap. 26 made him into a special valuation Court and the rules of the Subordinate Courts Ordinance did not apply and he had no power to review.

This Court was appealed to to say that the learned Magistrate was wrong in deciding not to hear the objections and also that he was wrong in holding that he had no power to review. Both appeals were dismissed.

The applicants now ask for an Order of Mandamus, all other methods of relief having failed. Owing to the special circumstances and entirely owing to the default of the applicants themselves the merits of their contentions have never been adjudicated on. I am unsympathetic except for one thing. It is quite probable that there may not be another valuation of these properties for ten years and it does not seem just nor does the board think it just, that the values should stand if indeed they are unfair.

In *Rex v. Nathan* 12 Q.B.D. 461 at p. 478 it was said most felicitously by BOWDEN, L.J., "A Writ of Mandamus, as everybody knows, is a high prerogative writ, intended for the purpose of supplying defects of justice. By Magna Carta the Crown is bound neither to deny justice to anybody nor to delay anybody in obtaining justice. If, therefore, there is no other means of obtaining justice the Writ of Mandamus is granted to enable justice to be done." The Court has an inherent jurisdiction to see that justice is done and I do not think I need seek further authority. I am glad to note that the applicants are willing and eager to pay all costs to which the board has been put and may be put through their omissions to comply with the law. I make the Order which will be in the following terms:

It having been shown to the satisfaction of the Court that substantial injustice would result to the Rhodesia Railways, Ltd., if the

objections which the said company wish to raise to the valuation of the property of the said company within the area of the board were not heard and the company having agreed to pay the costs of one visit of Mr. Streeter to revalue the company's property and the costs entailed by the sitting of the Court afresh to hear the said objections it is hereby ordered as follows:

- (1) That the Rhodesia Railways, Ltd., do lodge their said objections in proper form on or before the 31st October, 1941.
- (2) That the Resident Magistrate and assessors do thereupon sit to hear the said objections on the 10th November, 1941.
- (3) That the Rhodesia Railways, Ltd., do pay the costs of the board which are agreed to be the sum of £10 10s. being the costs of these proceedings.