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to put the note in evidence; and the Judge ought to have received it. The decree of the court below must, therefore, be reversed; and we must remand the case, under Sec. 351, with a direction that the suit be restored to its original number in the Register, and be tried by one of the Judges of this court.

WESTROPP, J.—I completely concur in the remarks of the Chief Justice.

Pigot applied for the costs of the appeal.

WESTROPP, J.—You cannot show any dissent on the part of the respondent to a reversal of the decree.

Pigot.—Will the costs, then, be costs in the suit? It seems hard that they should be borne by the appellant.

COUCH, C. J.—It would be equally hard in the case of the defendant. The defendant has stayed away, and seems to have been quite content that judgment should be given against him. I do not see that he can be made to pay costs. There ought to be no costs. Very possibly if the defendant had been here, he would not have taken any objection to the reversal of the decree.

Decree reversed and suit remanded.

Attorneys for appellant: *Keir, Ramsden, and Prescot.*

Original Suit No. 545 *of* 1865; *Appeal No.* 35.

PARBHUDA'S PRANJI'VANDA'S... *Appellant and Defendant.*
RA'MLA'L BHA'GIRATH ... *Plaintiff and Respondent.*

Sale of shares for future delivery—Readiness and willingness—Specific performance—Share "receipts."

Held that a contract to deliver shares in a public company is sufficiently performed when the vendor places the vendee in such a position as enables him to become the legal owner of them.

A share in a company signifies a definite portion of its capital; and does not necessarily mean the right of a person whose name is then actually on a register of shareholders.

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APPEAL from the decision of Sir M. R. SAUSSE, C.J.

The Original Suit was brought upon an agreement by which the defendant (the appellant) agreed to purchase from

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the plaintiff (the respondent) 200 shares in the Union Financial Corporation for the sum of Rs. 24,000—Rs. 50 being paid as earnest money; the purchase to be completed on the 1st of July 1865, or at any such time before that day as the purchaser might think fit to pay the purchase money.

The suit was heard on the 24th and 26th of November 1865; and the decree declared the plaintiff entitled to specific performance of the agreement, and on his undertaking to hand over the shares forthwith to the defendant, and to execute all proper transfers, &c., that he should recover from the defendant the sum of Rs. 24,420-5-0 for purchase money and interest, and Rs. 979 for costs.

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The grounds of objection taken to the decree on appeal were as follows:—That the Judge was in error in holding: (1) that the plaintiff was ready and willing to deliver the 200 shares of the Union Financial Corporation to the defendant; (2) that the plaintiff was possessed of the 200 shares on the 1st of July 1865; (3) that the receipts given by the corporation to the plaintiff were equivalent to share certificates; (4) that the plaintiff ought not to have tendered share certificates of the said shares on the 1st of July 1865; (5) that the plaintiff had not been guilty of such unreasonable delay in perfecting his title to the said shares as to disentitle him to a specific performance of the said contract; (6) that, on the 1st of July 1865, the plaintiff had a clear and unambiguous title to the said shares, so as to entitle him to a specific performance of the contract; (7) that it was not necessary to tender, on the 1st of July, transfer deeds of the said shares, duly stamped and executed; (8) that the blank transfer papers tendered by the plaintiff were sufficient.

The appeal now came on for hearing before COUCH, C.J., and WESTROPP, J.

Bayley (*Taylor* and *Mayhew* with him), for the appellant, contended that the plaintiff, having failed to do what was required by the contract, was not entitled either to

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damages, or to a specific performance as decreed by the Chief Justice. The contract itself was not an inartificial document: it bore traces of a lawyer's hand, and was in the form (*a*) which had been adopted in nearly all *váidá* transactions in shares; and the Court would, he apprehended, hold either party to the strict interpretation of any part of the agreement. The third clause states what the plaintiff contracted to do. Now it was not a compliance with that clause simply to deposit the documents with the corporation, instead of executing a proper transfer. What the defendant contracted for were shares, and the plaintiff was bound to effect a legal transfer. The plaintiff, in handing receipts in the names of other persons, did not give the same right as if he had been himself a registered shareholder. The letters of allotment which he tendered, may have been stolen from the original allottee and have passed into the market. The allottee is entitled to the shares. The mere possession of receipts would not necessarily result in an absolute right to the shares; and the letters of allotment are waste paper, unless the holder is on the register of shareholders. The contract showed that the purchaser was at liberty to call upon the vendor to give him the shares on any day between the execution of the contract and the 1st of July; he had only to tender the money to demand the delivery of the shares. It was not enough to show readiness and willingness, but the party must show that he was in a position to effect a transfer on any day between the date of the execution of the contract and that of the delivery of the shares. It has been held that a party must show he has made a legal tender of stock, and that his readiness and willingness to transfer is not sufficient. The vendor is, moreover, bound to obtain the assent of the directors to the transfer of stock. Blank transfers, such as were tendered in this case, are utterly valueless. They were not filled up in the name of any person, and purported to be signed by the original allottee at the bottom. The instrument had a blank

(*a*) The form will be found in 2 Bom. H. C. Rep. 273.

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to be filled up afterwards, and, therefore, was waste paper. But the transfers tendered to the defendant, besides being blank, were not stamped. By this lax way of transfer the revenue is defrauded. The contract was not satisfied by the acts of the plaintiff.

The following authorities were cited:—*Paradine* v. *Jane* (*b*); *Calonel* v. *Briggs* (*c*); *Thorpe* v. *Thorpe* (*d*); *Wivell* v. *Stapleton* (*e*); *Warren* v. *Consett* (*f*); *Shelburne* v. *Stapleton* (*g*); Notes to *Walton* v. *Waterhouse* (*h*); *Glazebrook* v. *Woodrow* (*i*); *Bordenave* v. *Gregory* (*j*); *Hibblewhite* v. *McMorine* (*k*); *Humble* v. *Langston* (*l*); *Davis* v. *Bank of England* (*m*); *Diwergier* v. *Fellows* (*n*); *Jackson* v. *Allaway* (*o*); *Bensley* v. *Bignold* (*p*); *Josephs* v. *Pebrer* (*q*); *Wilkinson* v. *Lloyd* (*r*); *Boyd* v. *Lett* (*s*); *Enthoven* v. *Hoyle* (*t*); *Hunt* v. *Gunn* (*u*); *Bermingham* v. *Sheridan* (*v*); *Seton* v. *Slade* (*w*); *Commercial Bank* v. *Mudsudun Chowdry* (*x*); *Maganbhái Hemchand* v. *Manchhábhái Kalliánchand, per Anstey, J.* (*y*); Smith's Mer. Law, ed. 1865, pp. 58 & 64; Act XIX. of 1857, Secs. 18 and 19; Act X. of 1862, Secs. 2 and 3, and Sched. A, cl. 26.

White (with him *McCulloch*) for the respondent.—On the day for the delivery of the shares the plaintiff proceeded in person to the defendant, whom he saw, and to whom he offered the receipts in person. The purchaser having taken no steps in the interval, the plaintiff offered to him, on the due date, receipts for 205 shares, accompanied by blank transfers, and application forms for transfer, all signed by him; and was ready there and then to put the necessary stamps upon the papers, and there and then to execute the transfers. The defendant, observing the receipts, objected

(*b*) Dyer 33 a.; S. C. Aleyn 27. (*c*) 1 Salk. 112. (*d*) *Ibid.* 171. (*e*) 8 Mod. 68.
(*f*) *Ibid.* 107. (*g*) *Ibid.* 292. (*h*) 2 Saun. 422 a. (*i*) 8 T. R. 366.
(*j*) 5 East 107. (*k*) 6 M. & W. 200. (*l*) 7 M. & W. 517.
(*m*) 2 Bing. 393. (*n*) 5 Bing. 248. (*o*) 6 M. & Gr. 942.
(*p*) 5 B. & Ald. 335. (*q*) 3 B. & C. 639. (*r*) 7 Q. B. 27.
(*s*) 1 C. B. 222. (*t*) 13 C. B. 373. (*u*) 3. Fos. & Finl. 223.
(*v*) 33 Law J., N. S. Chan. 571. (*w*) 2 Tudor L. Ca. Eq. 377.
(*x*) Ind. Jur. N. S. 17. (*y*) *Vide* next Case.

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to them because they were for 205 shares, whereas he had contracted for 200 only. It was explained to him that there was formerly a receipt for 25 shares in the name of Mr. T. Garrett, Postmaster, but that gentleman being absent from Bombay, the plaintiff had purchased in the market a receipt for thirty shares, five of which would be transferred into his (plaintiff's) name, and the rest into that of the defendant's. The plaintiff had completed his part of the contract. The defendant hung back during the whole interval, and appeared to be reluctant to take delivery; and the plaintiff, knowing that, did not go through the empty form of filling up the blanks and putting stamps to the transfers. They would both have been wasted; but the plaintiff went so far through the preliminary ceremony as to keep them ready with him. He was entitled to recover on the third clause, even though he had not signed the transfers or filled them up. A great portion of the argument proceeded on the basis of not distinguishing between the word "shares" and the title to a certain interest in a company. There could be no doubt that, on the 1st of July 1865, the plaintiff had an equitable title to the 200 shares, and he was afterwards clothed with the legal title. In no part of the agreement was there any condition that the vendor should be a registered holder of the shares. The plaintiff had got all the materials on the spot to effect the transfer, had the defendant shown any inclination to receive and pay for the shares; and in tendering the blank transfers and stamps with receipts the plaintiff did all he was required by the contract to do. It was the intention of the parties that no name should be introduced into the transfer; it could have been done at the moment, because the plaintiff went in person to tender the shares. Reference had been made to the ruling of another court that the vendor should be a registered shareholder between the date of the contract and the date of delivery of the shares. The authorities were the other way. The learned Chief Justice [Sir M. R. Sausse] was of a different opinion in the *Imperial Banking Company* v. *Átmárám Mádhavji* (*z*). It was

(*z*) 2 Bom. H. C. Rep. 260.

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wholly immaterial what documents the vendor had, if they were sufficient, as declared by Mr. Clifton, to effect a transfer of the shares into the name of the purchaser. The plaintiff went one step further than was necessary. He handed the receipts for the shares to the manager of the Union Financial for a transfer into the purchaser's name, which he was not bound to do. The plaintiffs in the case of the *Imperial Banking Company* v. *A'tmárám Mádhavji* did not at all apply for a transfer into the purchaser's name, and yet they recovered. It would have been a work of supererogation on the part of the plaintiff to have had the shares transferred into the defendant's name, because the latter was reluctant to take delivery, and was not ready with the money. He did all, and more than, he was bound to do. There had been a conflicting decision cited, but the Court would have no difficulty in coming to the right conclusion.

Bayley was heard in reply.

Cur. adv. vult.

July 20.

COUCH, C. J.—This was a suit upon an agreement by which the defendant (the appellant) agreed to purchase from the plaintiff (the respondent) two hundred shares in the Union Financial Corporation for the sum of Rs. 23,590; the purchase to be completed on the 1st of July 1865, or at such time before that day as the purchaser might think fit to pay the purchase money.

The plaint was filed on the 8th of July, and the plaintiff prayed that the defendant might be decreed specifically to perform the agreement, or to pay damages. The defendant put in a written statement, and the suit came on for hearing before the late Chief Justice on the 24th of November last, when the following issues were framed :—(1) whether the plaintiff was ready and willing to deliver the 200 shares to the defendant according to his contract; (2) whether the contract was a wagering contract under Act XXI. of 1848.

The defendant's counsel, at the close of the examination of the defendant, abandoned the second issue, and the learned

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Judge found the first issue for the plaintiff, and declared him entitled to specific performance of the agreement; and, the plaintiff undertaking to hand over forthwith the said shares in the agreement mentioned to the defendant, and to execute all proper transfers, and to do all other matters, and pay all expenses for that purpose required by the third paragraph of the agreement, he decreed that the plaintiff should recover from the defendant Rs. 24,420-5-0 for purchase money and interest.

Against this decree the defendant appealed, on the ground that the learned Judge was in error in finding the first issue for the plaintiff, and holding that the plaintiff was entitled to a specific performance of the agreement. The case came on for hearing before the Court of Appeal on the 26th of January last, and was fully argued by counsel on that day, and on the 30th of January, when the appellant's counsel was heard in reply; and it being stated by him that a similar question was raised in another appeal from a decree of Mr. Justice *Anstey*, which was about to be presented, we thought it right to postpone giving judgment until that appeal had been heard.

That Appeal was heard before us on the 21st of June last, and the finding of the court below on the issue—whether the plaintiff was ready and willing to perform his contract—was reversed, and the case remanded for trial of the issue—whether the contract was a wagering one—the Judge having omitted to determine that, and the defendant not having given evidence upon it, in consequence of the first issue being found for him upon the evidence given by the plaintiff.

The facts of that case were different from those of the present case; but the cases resemble each other in this, that the question in both of them was, what was the vendor bound to do in order to perform his part of the contract?

In order to determine this in the present case, it is necessary to consider what it was that the plaintiff agreed

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to sell and the defendant to buy. In the contract they are called "Two hundred shares, of (Rs. 100 being already paid) Rs. 400 each in the Union Financial Corporation, to be transferred, as hereinafter mentioned." A share in a company signifies a definite portion of its capital, and a contract to sell a share is a contract to sell and transfer that right. By using the word "share," the parties to a contract of sale do not necessarily mean the right of a person whose name is then actually on a register of shareholders. This appears from the cases of *Mitchell* v. *Newhall* (*a*), *Tempest* v. *Kilner* (*b*), and *Beckitt* v. *Bilbrough* (*c*). And a contract to deliver shares in a public company is sufficiently performed when the contracting party places the other in the position of being the legal owner of them: *Hunt* v. *Gunn* (*d*). We think the contract in the present case was a contract to sell to the defendant the right to 200 portions of 400 rupees each in the capital of the Union Financial Corporation, and to transfer that right to the defendant, and pay the expenses of such transfer and of getting the defendant's name entered in the books of the company as the owner thereof; and the question is, whether the plaintiff has shown that he was ready and willing to do this.

The first witness was the plaintiff himself, who said that on the 1st of July he went with a clerk of his attorney to the defendant, and took with him the receipts for 200 shares and a notice; that they saw the defendant, and the attorney's clerk handed to him the receipts and the applications for transfer, twenty-three in number, with stamps to the amount of Rs. 50. The applications for transfer were signed by the plaintiff, and he got the receipts he tendered to the defendant from the company's office, when he gave the allotment papers for 200 shares to the company. That he applied for certificates of shares when he got the receipts, and they said the certificates were not ready, and he was put off from day to day, but on the 13th of July the certificates produced were given to him by the bank in lieu of the receipts. (The

(*a*) 15 M. & W. 308; 15 Law J., Ex. 292. (*b*) *Ibid.* C. P. 10; 3 C. B., 253.
(*c*) 8 Hare 188; 19. Law J. Ch. 522. (*d*) 13 C. B., N. S. 493.

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certificates produced amounted in all to 200 shares.) That after the defendant had taken and examined the documents, he asked for the money. The defendant said there were 205 shares (the cause of this had been explained by the witness), and he then asked the defendant to come to the bank and have 200 shares transferred to his name, and five should be transferred to his own; that the defendant said "Go now," and took notes of the receipt papers, and gave them back to him.

The next witness was Mr. Charles Clifton, the then manager to the liquidators of the Union Financial Corporation, and formerly its secretary; and he said, that a receipt which he had lost after he came into court, being one of eight, was given to the plaintiff, and the possession of it by him would entitle him to have share certificates issued in the name of the original allottee, and transferred to the person whose name would appear on the transfer papers as the transferee. The eight receipts were given to the plaintiff in exchange for allotment papers and transfer papers and applications for transfer and deposit receipts. If the defendant or any one had produced those eight receipts with transfers signed by the plaintiff, and letters of application, all signed by the plaintiff, he would, in the ordinary course of business, have transferred the shares to the defendant, after receiving the order of the directors, and he did give the plaintiff certificates upon the 9th of July upon the receipts they had. On cross-examination he said that if the plaintiff had applied earlier, the share certificates could have been issued before the 1st of July.

As to what passed at the interview with the defendant, the plaintiff's evidence was confirmed by the attorney's clerk.

The next witness was Mr. John Smith, the officiating manager of the Financial Association of India and China, who said that such receipts as had been produced were, as he believed, received as shares in the market until certificates were ready. That he had had many transactions with

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joint stock companies and banks, and had invariably found that such receipts were treated as giving a right to the certificates; and that, had he granted a *certificate* similar to that in the present case, he would have felt bound to give the certificate to the person whose name appeared in the receipt. (The learned Judge has written "certificate," but it is obvious that the witness meant "receipt" where certificate is first written); and that if the receipt was issued according to the practice of the company, the receipt-holder would be entitled to the certificate.

We are clearly of opinion that, upon this evidence, the learned Judge was right in finding the issue for the plaintiff. The plaintiff appears to have been ready and willing and able to do all that was necessary to make the defendant the legal owner of the shares; and as no question was raised, either in the Court below, or on the argument of this appeal, as to the propriety of granting specific performance of contracts of this nature, and, as the plaintiff has not been guilty of lâches or misconduct, we confirm the decree with costs.

Decree affirmed.

Attorneys for appellant: *Dallas, Lynch, and Langdale.*

Attorneys for respondent: *Acland, Prentis, and Bishop.*