

*In re* ALLIANCE FINANCIAL CORPORATION.

## BLANEY'S CASE.

*Act XIX. of 1857—Registration of Company—secondary evidence of certificate—evidence aliunde—Register of Shareholders—Contributory.*

The Register of Shareholders, required by Sec. 14 of Act XIX. of 1857, may consist of particulars entered in different books, which taken together substantially contain all the information which the Act requires.

If there be a substantial compliance with the requisitions of the Act, the Register is not invalidated by reason of slight deviations from its directions, or by unimportant omissions or defects in the particulars of information specified in Sec. 14.

If the Certificate of Registration be not forthcoming, the fact of incorporation may be proved *aliunde*.

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THIS was an application by Thomas Blaney to have his name removed from the list of contributories of the Alliance Financial Corporation, as settled by the official liquidator.

*The Advocate General (Hon'ble L. H. Bayley)* and *Pigot*, for the applicant, contended that there had been no acceptance of shares by him; that the company was not registered; that the name of the applicant was not entered in a "Register of Shareholders,"—there being in fact no such Register within the meaning of the Act; and that he was not a subscriber to the Memorandum of Association.

*Howard* and *McCulloch*, for the official liquidator, argued that the applicant had virtually admitted by his acts that he had accepted the shares; that there was sufficient proof of the company having been incorporated; that there was what substantially constituted a "Register of Shareholders," in the books of the corporation produced before the Court, which contained all the information required by the Act; or, at all events, that the Court had the power to direct the drawing up of such a Register from the materials contained in those books; and that the name of the applicant had been entered in those books. He was, therefore, a shareholder and a contributory.

*Cur. adv. vult.*

SARGENT, J.:—This case comes before the Court on an application by Mr. Thomas Blaney to have his name removed from the list of contributors of the Alliance Financial Corporation, as settled by the official liquidator.

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The circumstances under which Mr. Blaney became possessed of the shares, which are now the subject of discussion, were as follows:—It appears, from what Mr. Blaney has stated, that an allotment of five shares was made to him, without any written or verbal application for shares on his part; that he subsequently paid the deposit upon those shares, and afterwards proceeded to the office of the solicitor for the purpose of signing (as he said) the documents which it was necessary for him to sign to make him a shareholder of the company; that he gave the people at the office to understand that he had come for that purpose; that he was directed to go into a certain room, where he would find the papers he wanted; that he went into that room and did find certain papers, which he signed. Those papers, he said, were blank sheets of paper, which were not annexed to any deed,—not annexed, as he said, to the Memorandum or Articles of Association.

Now, these being the circumstances under which he has become possessed of these shares, and dealt with the company in respect of the shares, the question is whether he falls within Secs. 64 and 17 of Act XIX. of 1857, which taken together define a contributory. By Sec. 64 “Any existing or former shareholder upon whom calls are authorised to be made by the Third Part of this Act is hereinafter called a ‘contributory;’” and with regard to the question, Who is a shareholder? Sec. 17 says: “Every person who has accepted any share in a Company registered under this Act, and whose name is entered in the Register of Shareholders, and no other person (except a subscriber to the Memorandum of Association in respect of the shares subscribed for by him), shall, for the purposes of this Act, be deemed to be a shareholder.”

It has been contended for Mr. Blaney that, in the first place, there had been no acceptance of the shares; secondly,

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that the company has not been incorporated; thirdly, that there is no Register within the meaning of the Act; and fourthly, that he was not a subscriber to the Memorandum of Association.

As to the question whether there has been an acceptance of the shares, Mr. Blaney himself has virtually admitted in his evidence that he accepted the shares,—that is to say, he admitted having paid the deposit and done all that a man usually does when he takes shares; and only objected that something else was required to make him a shareholder and a contributory.

Next, in respect to whether or no the company was an incorporated company, of course the best and most conclusive evidence would be the production of the certificate of incorporation, which, according to Sec. 11 of the Act, “shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.” That, of course, was the natural proof of incorporation, and the one which the Court would expect to have given it, unless satisfactory reason could be given for its non-production. In the present case, however, it appears that the certificate of registration is not forthcoming; and the first question that arises is, whether secondary evidence can be given of the certificate. The answer to this question must depend, of course, upon the evidence as to whether search has been made for the certificate in all places where it might reasonably be expected to be found. [With regard to this point his Lordship read the evidence of Mr. Crawford, the solicitor for the company, who said that he had taken the usual steps for registering the company, and that he had obtained a certificate of registration from the Registrar, and handed it over to the manager of the company, having first taken a copy of it; that the manager to whom the certificate was given, on the 25th of November 1864, was Mr. William Wilson, who was no longer in Bombay; and that he had not since seen the certificate, and had only become aware at the previous hearing of this matter that it could not be found. His Lordship also read the evidence of Mr. G. R. Wilson, the official liquidator, and of

Mr. Curnin, the manager for the liquidators, showing that a diligent and thorough search had been made, but that the document could not be found.] Under these circumstances the question is, whether secondary evidence of the contents of the certificate is admissible. I am of opinion that it is; and, therefore, admitting secondary evidence, the question is, whether any satisfactory evidence has been given as to the contents of that document. Coupling Mr. Crawford's evidence as to the copy which he said he had taken of the certificate, and which he produced in court, with the evidence of Mr. Taylor that he had given a certificate, the Court has conclusive evidence as to the fact that a certificate was given, and also as to the contents of that certificate. It has conclusive evidence as to a paper having been given which was stated to have been a certificate; and it has secondary evidence as to the contents of that certificate, from the copy which Mr. Crawford produced, and which showed that the original document had been a certificate of registration.

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There is thus sufficient evidence that the company has been incorporated; but the case does not rest there. The certificate of registration, it is quite clear, is not the only evidence; for the fact of incorporation may be proved *abundante*: *Agriculturist Cattle Insurance Co. v. Fitzgerald (a)*.

Assuming such evidence to be admissible, what evidence is there? There is the evidence of Mr. Crawford, who says that he went to the Registrar's office on the 25th of October 1864, taking with him the Memorandum and Articles of Association, and that he obtained a certificate of registration from Mr. Taylor, the Registrar, to whom he paid the fees. His evidence, therefore, goes to prove that he had done all that was necessary for him to do; and the next question is how far has his evidence been corroborated by the evidence of Mr. Taylor and of the other witnesses who have been examined. [His Lordship here read from Mr. Taylor's evidence, which showed that Mr. Taylor had given a certificate of registration, and, moreover, that the company

(a) 16 Q. B. 432; 20 Law J., N. S., Q. B. 244.

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had been registered in a book called the Register of Certificates.] It is fair, however, to say, that from the evidence of Mr. Curnin, who is stated to have kept that book, it appears that the book had been copied,—as, indeed, Mr. Taylor himself admitted,—from another book; and the counsel for Mr. Blaney very properly required that that book should be produced. The book has been produced, and the original entry of the registration of this company has been found in it; but Mr. Curnin himself stated in evidence that that entry was made later in the year than the 25th of October 1864, which appears from the book to be the date of registration. It thus appears that the actual registration did not take place when Mr. Taylor gave the certificate of registration; and that would seem to have arisen from his having allowed the Memorandum and Articles of Association to be taken back by the solicitor of the company, under the promise that they would be returned as soon as possible. They appear from the evidence of Mr. Crawford to have been returned in about two months; and that was confirmed by another and somewhat hostile witness (Bápu Moroji), who had been a clerk under the Registrar, and who said he thought it had been one or two months after the 25th of October when he first saw the Memorandum and Articles of Association. It also tallies with what Mr. Curnin stated: for he said the actual entry had been made about the end of the year, and that it must have been made upon the production of the proper documents.

It appears, therefore, that the company had been registered before the end of the year 1864; but whether it could be said that it was actually registered when Mr. Taylor gave the certificate was another question. The evidence was quite conclusive that, before the end of the year, this company had been duly registered in a book kept for the purpose of the registration of companies; and, therefore, whether the matter be considered with reference to the certificate, or with reference to evidence *aliunde*, it appears that the company had been registered.

The next question for consideration is, whether the books

which have been produced as a Register can be viewed in that light, having regard to the provisions of the Act.

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Now, these books purported, by the endorsements upon them, to be a stock-ledger, a register of transfers of shares, and a shareholders' address-book; and it was contended for Mr. Blaney that this was nothing more than a register of allottees. I shall consider, in the first place, whether these books contain, substantially, the information which the Act requires that every Register should contain. Sec. 14 of the Act is as follows:—"Every Company registered under this Act, hereinafter referred to as the Company, shall cause to be kept in one or more books a Register of Shareholders, and there shall be entered therein the following particulars:—(1) The names, addresses, and occupations, if any, of the shareholders in the Company, and the shares held by each of them, distinguishing each share by its number; (2) the amount paid on the shares of each shareholder; (3) the date at which the name of any person was entered in the Register as a shareholder; (4) the date at which any person ceased to be a shareholder in respect of any share." Now, in the books before the Court there are the names and addresses of the shareholders, but not the occupations. It is true that the actual numbers of the shares,—that is, each number separately,—are not set out; but it appears that the extreme numbers of the shares are given,—that is to say, the first and the last numbers are given, without those that were intermediate. It may reasonably be concluded that the numbers not given were those which were intermediate between the numbers given; and this was the effect of a decision in the House of Lords, in the case of *Bain v. Proprietors Whitehaven R. Co.* (b), where—though the Act required that each share should be distinguished by its number—it was held that "No. 1551 to No. 1600," as including all the intermediate numbers, was sufficient. In the present case, the first and last numbers being given, there was a substantial compliance with the Act, which required that the number of each share should be inserted.

(b) 3 H. L. Ca. 1.

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Further, "the amount paid on the shares of each shareholder" appears in the books. With regard to the date as required by the Act, the month and the day of the month are given, but not the year. But, under the circumstances, it would be impossible to hold that books which purported to be a Register should not be regarded as such, on the ground that the year in which entries had been made was wanting. It might be that the want of the date would give rise to considerable difficulties, if the company were suing in respect of calls, or, indeed, if the company had continued in operation for more than three years; but it would be impossible to hold that the Register was not a register, simply because the complete date was not there. No difficulty can arise in the present case, as the order for winding up the present company was made in March 1866, and the books could refer to no other "April" than April 1865. It is well established that slight deviations from the requisitions of the Act do not invalidate the Register so as to prevent the Court from regarding it as a Register; this is perfectly clear from the leading case on the subject, *The Southampton Dock Co. v. Richards*, decided by Tindal, C.J. (c), which was followed in the subsequent case of the *Wolverhampton New Waterworks Co. v. Hawkesford* (d). In the latter case the Act required that the Register should be sealed, but the Court held that the absence of the seal did not invalidate the Register. And there are many other similar cases, all showing that if the information required is substantially given, unimportant omissions and defects do not invalidate the Register.

Under these circumstances I am of opinion that the books before the Court do substantially constitute a Register; and that it is a Register of Shareholders (and not of allottees) is quite clear from the very fact that a register of transfers had been kept, which was only possible after actual incorporation, and after allottees assumed the more definite character of shareholders; and that the endorsement upon one of the books was "shareholders' addresses." Again, it was plain that the books referred to one another, from the fact that

(c) 1 Man. & G. 448.

(d) 29 Law J., N. S., C. P., 121.

the same names were found in each of them; and, therefore, taking the three books together, it is clear to me that these books do substantially constitute a Register within the meaning of the 14th section of the Act.

I consequently find that there has been an acceptance of the shares, and that Mr. Blaney's name has been entered in books which are equivalent to a Register of Shareholders; and such being the case, it is unnecessary to consider the further question,—whether there had been a subscription of the Memorandum of Association,—the name having been entered in the Register. The result, therefore, is that Mr. Blaney's name must stand on the list of contributories.

*Application refused.*

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*In re* EAST INDIAN TRADING AND BANKING  
COMPANY.

JAMNA'DA'S SAYAKLA'L'S CASE.

*Purchase of Company's shares by individual Directors and Managers—Absence of sanction by Board—Omission of formalities enjoined by the Legislature and by Articles of Association—Laches of original allottee—Indian Companies' Acts of 1857 and 1866—Contributory.*

J. S., an allottee of 25 shares in a company registered under Act XIX. of 1857, signed the Memorandum and Articles of Association, and paid the first call on the 28th of September 1863, on which day he sold the 25 shares to B. P., the Chairman of the company. The purchase by B. P. was made in pursuance of an agreement entered into between B. P. and P. H., another Director of the company, and two other persons, who were members of the firm of B., B., and Co., the then Managers of the company, to buy in partnership 2,800 shares of the company, which they accordingly jointly purchased and subsequently divided among themselves; B. P. taking for himself two-fifths of the whole, including the 25 shares of J. S.

The fact of the joint purchase was not communicated to the other Directors of the company; nor was there any evidence to show that their attention had been called to certain entries in the books of the company relating to B. P. having paid the second call on his two-fifths of the joint purchase.

J. S. got no notice to pay the second call, and never applied for or obtained a certificate for the 25 shares; but such a certificate was obtained by B. P., on the 10th of October 1864, certifying that J. S. was the shareholder. J. S. had signed a blank form of transfer, and a blank form of request to the Directors to transfer, which were undated and without