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.

In re EAST INDIAN TRADING AND BANKING COMPANY.

JAMNA'DA'S SAVAKLA'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—Lâches 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 P. B. 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

particulars; but B. P. never executed the transfer as transferee, and the shares never were transferred to his name on the register, nor was the sale to him ever brought to the notice of the Directors as a Board, or any request made to them to sanction the transfer to him, or to any of his partners, of any portion of the 2,800 shares; and the Articles of Association required the consent in writing of the Directors to every transfer.

On application by J. S. that his name should be removed from the list of contributories, as framed by the Official Liquidator, and the names of B. P.'s trustees, under Act XXVIII. of 1865, substituted therein in respect of the 25 shares :—

Held that J. S. was not exonerated, under the circumstances, from the duty of obeying the Articles of Association and the provisions of Act XIX. of 1857; that the act of an individual Director in his private capacity ought not to bind the Board, which had never authorised or ratified his conduct; and that the Official Liquidator, as representing the body of shareholders, rightly insisted upon keeping J. S.'s name on the list of shareholders.

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A SUMMONS had been obtained, on the 23rd of February 1867, by *Mr. Keir*, on behalf of the official liquidator, Mr. P. E. Bendir: calling upon certain shareholders to show cause why calls, made originally by the company, and which remained unpaid, should not be paid by them.

Mr. Rimington (Messrs. Kelly and Co.) attended before the sitting Judge in chambers, on the 7th of March, for J. S. and two other persons on the list of contributories; and applied that the name of J. S. should be removed from the list, and that the names of the trustees, under Act XXVIII. of 1865, of B. P., should be substituted.

Mr. Peile (Messrs. Cleveland and Peile), on behalf of B. P.'s trustees, opposed Mr. Rimington's application, and obtained an adjournment till the 18th of March, on which day, and on the 28th of March, evidence was gone into at considerable length.

Howard, for the official liquidator, supported the original summons of the 23rd February, and opposed Mr. Rimington's application.

WESTROPP, J. :—The facts of the case are as follows :—

Jamnádás Savaklál, the applicant, was an original allottee of 25 shares in this company. He signed the Memorandum and Articles of Association, and paid the first call of twenty-five rupees per share on the 28th of Septem-

ber 1863. He, on the same day, instructed a broker, Tulsidás Kisandás, to sell the 25 shares. They were sold on that day, as Jamnádás believed, to Bhagvandás Parshotamdás, and on the same day, or within three or four days afterwards, were paid for.

The directors of the company at the time of that sale were Bhagvandás Parshotamdás (chairman and apparently the chief promoter of the company), Pránjivandás Hargovandás, Balvantráv Bhikáji, and Harichand Harishankar. They are named in the 24th Article of Association.

The managers of the company, acting under the Board of Directors, were, under the 25th Article of Association, the firm of Bhikú, Bábáji, & Co., the partners in which were eight in number,—namely, Bhikú Sázbá, Bábáji Káshináth, Náráyaṇ Sázbá, Bálkrishṇá Sázbá, Krishṇáráv Pándurang, Ganpatráv Pándurang, Dhákji Káshináth, and A'nandráv Pándurang. That firm filled the office of managers from the institution of the company, in September 1863, until June 1864, when they resigned, and two of the partners, viz., Bhikú Sázbá and Bábáji Káshináth, were appointed directors. One Chintobá Bháskar was then appointed manager.

Upon, or immediately after, the starting of the company, Bhagvandás Parshotamdás, Pránjívandás Hargovandás (then being directors), Bhikú Sázbá and Bábáji Káshináth, or their firm of Bhikú, Bábáji, and Company (then being managers of the company), agreed to buy 2,800 shares (scrip) of the company in partnership, expecting that the transaction would be profitable, and would have the effect of raising the value of the shares in the market. They did so, and amongst the shares so purchased were the 25 shares of Jamnádás Savaklál. The 2,800 shares were subsequently divided into five parts, two of which, including the 25 shares of Jamnádás, were taken by Bhagvandás Parshotamdás, and the remaining three parts were given respectively to the three other partners in the originally joint purchase of 2,800 shares.

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To that joint purchase the directors Balvantráv Bhikáji and Harichand Harishankar were not parties. Their co-directors, who were implicated in it, admit that they were anxious to conceal it from them, and carefully refrained from communicating it to them, and state that they believe that neither Balvantráv Bhikáji nor Harichand Harishankar knew anything about the purchase of the 2,800 shares in general, or the 25 shares of Jamnádás Savaklál in particular. There certainly is not any direct evidence that they did know of either of these purchases. It has, however, been contended with much ability by Mr. Rimington that they must have known of these purchases, and must be taken to have sanctioned them.

It is said that it was apparent in the books and documents of the company that Bhagvandás Parshotamdás had purchased 1,360 shares, including the 25 shares in question, and had paid to the company, and the company had received from him, as such purchaser, the second call of Rs. 25 per share upon the 1,360 shares, and that all of the directors must be taken to be aware of the contents of the company's books, and that the company is now estopped from treating Jamnádás Savaklál as a shareholder, and Bhagvandás Parshotamdás is estopped from denying that he is the holder of the 25 shares.

That Bhagvandás did pay the second call upon the 1,360 shares is undeniable. He himself admits it. He, as an original allottee, held in his own name 100 shares only. But 100 shares were also allotted to his wife, and 100 shares to his cousin Pránjívandás Tulsídás. Upon all 300 Bhagvandás has paid the first and second calls.

On the credit side of the company's cash-book, which shows expenditure, there appears at page 94, under date the 8th of February 1864, in connexion with the name of Bhagvandás Parshotamdás, the following item :—"Cash paid for his shares, being 2nd call, Rs. 41,762-13-4." It contains a reference, in red ink, to voucher No. 21. On the debit side

and opposite page 93 of the same cash-book, there appear the following items, under date the 8th of February 1864 :—

To STOCK ACCOUNT.

Cash received from 3 shareholders, v. No. 18, being second call	Rs.	750	0	0
Cash received from 4 shareholders, v. No. 19, being second call	„	41,500	0	0
	Rs.	42,250	0	0

To INTEREST ACCOUNT.

Cash received from shareholders, v. 20	Rs.	4	12	0
Ditto ditto v. 21	„	262	13	4
	Rs.	267	9	4

The first and third of these items on the debit side have no bearing on the present question, but the second and fourth items (Rs. 41,500 and Rs. 262-13-4) on the debit side amount in the aggregate to the item Rs. 41,762-13-4, which I have mentioned as appearing on the credit side.

Voucher No. 21, which is a debit slip and referred to in red ink on both sides of the cash-book, shows that on the 8th of February 1864 Bhagvandás was debited with Rs. 41,762-13-4, in the following manner :—

"Debit to Bhagvandás Párshotamdás the amount paid to his account on the following shares as 2nd call—

Mr. Bhagvandás Parshotamdás—shares 100		Rs.	2,500	0	0
	do., interest	„	15	13	4
Mrs. do. do.	do.	„	2,500	0	0
	do., interest	„	15	13	4
Pránjivandás Jagmohandás—shares 100		„	2,500	0	0
Do.	do., interest	„	15	13	4
		Rs.	7,547	8	0
Mr. Bhagvandás Parshotamdás for shares 1,360 purchased by him		„	34,000	0	0
Do.	do. interest	„	215	5	4
		Rs.	41,762	13	4

The cash-book was usually produced to the directors at their weekly meetings. So far, however, as the evidence goes, it would show that the attention of Balvantráv Bhikáji and Harichand Harishankar (the two directors who were independent of the partnership dealing in the shares of the

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company) was not directed to the entries to which I have referred. It does not appear to have been the practice to submit vouchers, such as the debit slip No. 21, to the Board of Directors, unless specially called for, nor does that voucher appear to have been laid before them. Even if it had been produced, it would not have shown what the 1,360 shares were, or that the 25 shares originally allotted to Jamnádás Savaklál were among them. No document or entry *then in existence*, and in the possession of the company or its managers, has been produced before me, which would have marked the 25 shares in question as amongst the 1,360 shares on which Bhagvandás Parshotamdás paid the second call.

Mr. Rimington has indeed shown it, by reference to certain entries in a book called the share transfer register, and by an ingenious argument, founded upon those entries, as to the amounts paid in respect of the second call on the 8th of February 1864 upon certain shares, including the 25 shares of Jamnádás Savaklál; but he arrived at that result only after laborious ratiocination—a process which, even if the directors had before them the entries in that book, it is not probable that they would have resorted to.

The identification of the 25 shares as part of the 1,360 is more latent in, than patent upon, those entries. But the evidence of Bábáji Káshináth, adduced on behalf of Jamnádás Savaklál, proved that those entries are in the handwriting of Rámchandra Visrám, who was not in the employment of the company until after June 1864, when Chintobá Bháskar had become manager.

Those entries then, not having been made until many months after the payment of the second call on the 8th of February 1864, could not have been laid before the directors at any weekly meeting which occurred soon after that payment, and at which it is at all probable that their attention would have been directed, if it were so at all, to the entries at pages 93 and 94 of the cash-book to which I have already adverted.

The sale in September 1863 of the 25 shares was effected through brokers—Tulsídás on behalf of Jamnádás Savaklál, and Tríkam on behalf of the purchasing partnership, at the head of which was Bhagvandás. No interview seems to have taken place between Jamnádás and Bhagvandás or any other partner in the purchase. In November, Jamnádás signed a blank form of transfer and a blank form of request to the directors to transfer. These forms were undated, did not state how many shares had been sold, or the particular number of any one of the shares, or the name of the intended transferee, and continued in that state when produced before myself on the demand of Mr. Rimington, but by the trustees of Bhagvandás Parshotamdás, and not by the company or its liquidator. Subsequently to the signing of the blank transfer, an impress stamp appears to have been placed upon it at the desire of Bhagvandás. He never signed any of the forms. The blank forms signed by Jamnádás were given by him to a servant or broker of Bhagvandás; and Jamnádás in his oral evidence admitted that, after doing that, he "took no further steps with respect to the shares," and took chance for the transfer being completed.

He received no notice to pay the second call, or to pay the third call, except the notice to pay the official liquidator, and never applied for or obtained a certificate for the 25 shares.

Bhagvandás, however, did obtain such a certificate, No. 949, dated the 10th of October 1864, but it certified Jamnádás Savaklál to be the shareholder. It was for 25 shares, numbered 6,271 to 6,295, and was signed by Harichand Harishankar and Bhikú Sázbá as directors, and countersigned by Chintobá Bháskar as manager. Upon it was indorsed the payment of the second call, but there was no statement as to the person by whom it was paid. That certificate was produced by the trustees of Bhagvandás Parshotamdás.

The 25 shares do not appear to have been ever transferred in the register to the name of Bhagvandás. They stand in the book already described as the share transfer register in the name of Jamnádás Savaklál, and to him the first and second calls are there credited.

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There is not any evidence to show that the sale by Jamnádás was ever brought to the notice of the directors as a Board, or that they ever, as a Board, were requested to sanction the transfer to Bhagvandás or any of his partners. The transfer deed and the request to transfer appear never to have been laid before the Board, or to have left the possession of Bhagvandás, until he made them over to his trustees. He never executed the transfer as transferee. Bhagvandás must, and his co-director Pránjívandás may, have known of the purchase of 25 shares. He certainly knew that 2,800 shares had been purchased, but he denies—and I am not by any means prepared to say that he does so untruly,—that he knew that the 25 shares of Jamnádás were amongst them. There is not, however, any evidence that either Harichand Harishankar or Balvantráv Bhikáji ever heard of or sanctioned either purchase.

The managers no doubt knew that Bhagvandás held scrip for 1,360 shares, part of the 2,800, but they alone, and without the knowledge and authority of the Board, could not sanction the sale, or by such entries as have been produced render Bhagvandás the transferee.

The 4th Article of Association is :—"No shareholder shall transfer his share without the consent of the directors expressed in writing." The 5th is :—"The company shall not be obliged to register the transfer under the regulations Nos. 13 and 14 of the said Table B (to Act XIX. of 1857), unless he is approved by the directors;" and the 6th :—"If any shareholder feels aggrieved by the refusal of the directors to allow him to transfer his share, the matter shall be settled by a general meeting of the company."

Those articles establish this—that with the directors only did the power of sanctioning transfers in the first instance rest, and that in the event of their refusal an appeal lay to a general meeting of the shareholders.

And further, the law in force as to the transfer of shares at the time of the sale of his 25 shares by Jamnádás Savaklál, and down to the 1st of May 1866, was the 18th section of

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Act XIX. of 1857, which prescribes the form of transfer, and directs "that it shall be executed both by the transferor and transferee," and that the transferor shall be deemed to remain a holder of such shares until the name of the transferee is entered in the register book in respect thereof." Sec. 193 of Act X. of 1866 (the Indian Companies' Act), which enacts that "any company registered under Acts XIX. of 1857 or VII. of 1860, or either of them, may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct," did not come into force until the 1st of May 1866, and can apply only to transfers made since that time.

The Sheffield &c. Railway Company v. Woodcock (*a*), and *The Cheltenham &c. Railway Company* v. *Daniel* (*b*), were cited for the applicant, to show that Bhagvandás could not dispute the validity of the transfer, although the rules relating to transfer had not been formally complied with. However, both of these cases were actions for calls against transferees placed on the register of their own accord, and who were by their own conduct estopped from denying that they were shareholders.

In *Bargate v. Shortridge* (*c*) the transferee had been placed on the register, and transfers of the shares of the company had been for many years registered without the observance of the formalities required by the company's Deed. It is no doubt true that, although the prescribed formalities in making a transfer may not have been rigorously complied with, yet both the company and the transferee may by their acts have estopped themselves from denying that the transferee is a shareholder in the company. This has been held in many cases besides those already mentioned; for example, *Straffon's Executors' case* (*d*), *Sanderson's case* (*e*), *Maguire's case* (*f*), *Mayhew's case* (*g*), *Watson* v. *Eales* (*h*), *Gordon's case* (*i*).

(*a*) 7. M. & W. 574. (*b*) 2 Q. B. 281. (*c*) 5 H. L. Ca. 297.
(*d*) 1 D. M. & G. 576. (*e*) 3 D. & Sm. 66; 3 H. L. Ca. 698.
(*f*) 3 D. & Sm. 31. (*g*) 5 D. M. & G. 837. (*h*) 3 Jur. N. S. 53.
(*i*) 3 D. & Sm. 249.

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In all of the cases in which this doctrine has prevailed, it will, however, be found that the act treated as the act of the company was the act of the directors as a body, or of some official of the company duly authorised to perform it, and in most, if not all, of those cases the name of the transferee had been placed on the register. The case of *Meux's Executors* (*j*) is another instance in which the act of the directors was held to bind a company. But that act was a misrepresentation made by them as a body through their secretary. It cannot be pretended that there was any misrepresentation in the present case. The mere omission to send notice of the second call is not misrepresentation.

In *Walker's case*, one of those which has arisen in winding up Overend, Gurney, & Co. (*k*), the transfer was executed by the transferor only, and the court held that it could not dispense with the directions contained in the articles, and that, the transfer not having been, in pursuance of them, registered or submitted to the directors for their approval, the transferor's name must remain on the list of shareholders. The decision of Lord Romilly, M.R., in *Shepherd's case* (*l*), is to the same effect. That ruling was appealed against, but was upheld by the Lords Justices Turner and Cairns (*m*), who said that the remedy of the transferor, if any, was against the transferee, and not against the company, who were entitled to retain the name of the transferor upon the list.

In *Head's case* (*n*), where the registered owner of shares executed a transfer of them to a purchaser two years before the date of the winding-up order, but took no steps to procure the transfer to be registered, Lord Romilly refused to remove his name from the list of contributories, although the transferee was the solicitor of the company, against whom alone Lord Romilly said the transferor could seek indemnity.

(*j*) 2 D. M. & G. 522.
(*k*) Law Rep. 2 Eq. 554.
(*l*) Law Rep. 2 Eq. 564.
(*m*) Law Rep. 3 Eq. 16.
(*n*) Law Rep. 3 Eq. 84.
(*o*) Law Rep. 3 Eq. 86.

In *White's case* (*o*), the facts showed a similar negligence on the part of the transferor to apply to the Company for the registration of the transfer. A like decision was made. Lord Romilly there very fully discusses the equities between the transferor and transferee, and those between the transferor and the company. He says :—"Though the court may see its way as between A and B to decree specific performance of a transfer of shares, yet it may say, as regards the shareholders themselves, it would be inequitable and improper to make that alteration in the list of the shareholders."

Jamnádás Savaklál, has, it is true, signed blank forms of transfer and request to the directors to make the transfer, but has allowed three years to elapse without taking any steps to have those documents laid before the Board of Directors. The fact that he sold his scrip to one or two of the directors did not exonerate him from the duty of obeying the Articles and Act XIX. of 1857. Admitting that directors may by their conduct preclude themselves from raising objections to the completeness of a transfer founded on the omission of formalities enjoined by the Legislature, or by the Articles or Deed of Association, yet the act of an individual director acting in his private capacity cannot and ought not to bind the Board unless it authorised or ratified his conduct. If the execution by the transferor of the transfer had been brought officially to the notice of a Board consisting of directors who were cognisant of and parties to the scheme of purchasing the 2,800 shares, and that Board, although it may have neglected to place the transferee on the register, nevertheless recognised his purchase, and received from him payment of calls upon the purchased shares, it might, albeit that the independent directors were absent from the Board on the occasion of such a recognition or of such a receipt of calls, be a question of some difficulty whether the company was bound by the acts of that Board to recognise the transferee as the shareholder. It is unnecessary for me to determine or express any opinion upon that question. It does not arise here. The fact of the sale by Jamnádás Savaklál

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of his 25 shares was not brought before the Board. The Board was entitled to exercise a discretion by sanctioning or placing its veto upon the transfer. That opportunity was never afforded to it. Jamnádás Savaklál was content to send forth his transfer paper into the share market in such a condition that it was impossible from it to ascertain whether he had sold one, two, or the whole twenty-five of the shares allotted to him, or the name of the person to whom he had sold them. He left it in the power of the vendee to insert his own name or any other person's name in the transfer, or to resell the scrip without inserting any name in the transfer, and to leave it in the power of the subsequent purchasers to do the same, and thus to deprive the revenue of the duty payable upon fresh transfers, and to evade all responsibility as registered shareholders. Up to the 1st of May 1866 Jamnádás Savaklál might have applied to the court, if necessary, for an order, under Sec. 23 of Act XIX. of 1857, that the register should be rectified, or after the 1st of May 1866, and down to the 19th of August in that year, when the absolute order to wind up was made, for a similar order for rectification of the register under Sec. 34 of the Indian Companies' Act of 1866. Adopting, with the unimportant variation of a single date, the language of Lord Romilly in *White's* case, I may say:—"Here the transfer takes place in September 1863, and the winding-up order is not made until 1866, and there is no quarrel. There is nothing to stop the registration of the transfer; why does not the vendor compel the purchaser to register the shares? He could have done so; but he has taken no steps for that purpose; and assuming"—a point upon which I refrain from expressing any opinion—"that the purchaser is bound to make good to him the price of the shares, and to indemnify him from all consequences, that is relief to be sought in a suit between those two persons. But in the case before me, I have to regard the rights and condition of the shareholders themselves. How are the shareholders of the company affected? They say,—You were bound to let us know what was the state of the company at the earliest period, and as you have not thought fit to do so, but have held

your peace for a period of three years, and done nothing whatever, you cannot complain now; and we insist upon having you on the list of shareholders, you not having taken any step to enforce your right to get the transfer made."

The application made for the removal of the name of Jamnádás Savaklál from the list of contributories must be refused. He must pay such past call, if any, as may still remain due upon his shares, and the costs of the official liquidator in this contest.

I am not called upon to offer, and I, therefore, do not offer, any opinion upon the claim of Jamnádás to indemnification against Bhagvandás Párshotamdás or his co-purchasers, or against his or their estates. In that matter Jamnádás may proceed as he may be advised.

The trustees of Bhagvandás Parshotamdás must bear their own costs of resisting the present application.

In re MERCANTILE CREDIT AND FINANCIAL ASSOCIATION, AND THE INDIAN COMPANIES' ACT, 1866.

Ex parte M. R. DALVI and others.

Purchase by company of its own shares—Neglect to register transfer—Estoppel—Allottees—Contributories—Act XIX. of 1857—Articles of Association.

A company registered under Act XIX. of 1857, and enabled by its Memorandum of Association to purchase its own shares, purchased seven hundred of them which were in scrip, share certificates having never been issued in respect of them. The letters of allotment indorsed by the allottees, and receipts for the first call, were made over, at the time of purchase, to the company. No transfers, however, were executed by the allottees, nor were the shares registered by the company in their own name; but they continued to stand in the names of the allottees. Two thousand of the seven thousand shares had been resold by the company, and the remaining five thousand were mentioned in a list, kept by the company, of shares purchased by them.

On application by the allottees to have their names removed from the list of contributories, as framed by the official liquidator :—