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 :—

Held, that the company, through its directors, having, as well by the act of purchase as by their subsequent conduct, treated themselves as the owners of the shares, could not be permitted to take advantage of their own neglect, or that of their officers, in not registering the shares in the name of the company, and that the name of the company should, therefore, be substituted as holders of the shares.

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THIS was an application on behalf of several persons, whose names stood in Part II. of the list of contributories of the Mercantile Credit and Financial Association, as framed by the official liquidator, to be removed from it.

Dunbar for Mádhavráv Náráyaṇ Dalvi and many other persons.

Macpherson for Balvantráv Bhikáji Daule and two other persons.

The Advocate General (*Honourable L. H. Bayley*) for the official liquidator.

Cur. adv. vult.

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WESTROPP, J :—This company was registered, under Act XIX. of 1857 and Act VII. of 1860, on the 29th of November 1864. The question, as to the right of the parties whose names stand in Part II. of the list of contributories to be removed from it, has been twice argued before me, and stood over for consideration.

That part of the list contains the names of the original allottees of seven thousand shares, by whom those shares have been, at some time or times previously to the 17th of January 1865, sold in scrip to the company. The allottees executed no transfers to the company, and the shares still stand in the names of the allottees, and have never been regularly registered by the company in its own name. The letters of allotment indorsed by the allottees, and the receipts for the first call, were, at the time of the sale of the shares, made over to the company, no share certificates having been issued to any of those allottees.

The company subsequently sold two thousand of those

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shares in scrip to the Oriental Financial Association, and made over the letters of allotment of those two thousand shares, and the receipts for the first calls upon them, to the latter association, and on the same day contracted to repurchase them, and to take delivery thereof on a future day. Before that day arrived, a second call was made and became payable. Notice of that second call, and that if it were not paid, the two thousand shares would be declared to be forfeited, was sent by the company, not, as ought to have been done, to their own vendees, the Oriental Financial Association, but to the original allottees of those two thousand shares—a proceeding apparently intended to enable the company to declare a forfeiture of those shares, which had then considerably fallen in market value, and so to provide for their escape from the necessity of performing their contract to repurchase the same two thousand shares from the Oriental Association, at a higher price than that at which the company had sold them to that association. The Association not having paid the second call, the company declared the two thousand shares to be forfeited. Of the discreditable nature of that transaction I have already, on a former day, sufficiently spoken. In a civil suit instituted by the Oriental Financial Association against this company, for the purpose of compelling this company to take delivery of the two thousand shares, and begun long before the winding up of the company commenced, the Chief Justice, notwithstanding the attempted forfeiture, held the company bound by its contract to repurchase the two thousand shares from the Oriental Association (*a*). The company appealed against that decision, but finding, during the progress of the argument, that the court of appeal seemed strongly disposed, to uphold it, abandoned the appeal, admitted their liability and compromised the claim.

The third clause of the Memorandum of Association enabled the company to purchase its own shares, so that it was impossible to raise the objection that it was *ultra vires* on the part of the company to make such a purchase. On the first

(*a*) *Antè*, *p.* 1.

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day of the revision of this Part II. of the list of contributories, an opinion, to which I still adhere, was expressed by myself, that the official liquidator, representing, as he does here, the company, was estopped under the above circumstances from maintaining that the two thousand shares still belonged to the original allottees, and that this case falls within the principle on which Mr. Maclean's case had been decided. The shares were allotted in November 1864, on the 24th of which month Mr. Maclean, through a broker, sold his fifty shares to the company, executed no transfer paper, but indorsed the letter of allotment, and made it, together with the receipt for the first call on those fifty shares, over to the company, who resold them, on the 26th of the same month, in the bazaar, and made over the letter of allotment and receipt to the purchaser, but failed to remove Mr. Maclean's name from the list, and to substitute for it either that of the company or that of the new purchaser. The purchase of Mr. Maclean's shares by the company appeared in the company's books, although not on the register. Under these circumstances I thought that Mr. Maclean could not have successfully sued the company for a share certificate, and demanded to be treated as a shareholder, and that he would be estopped from doing so by the sale of his scrip to the company; and that, on the other hand, the company would be estopped from contending that shares still belonged to him, which they had purchased from him, might have registered immediately on such purchase in their own name, and neglected to do so, but did actually resell to a stranger, and so completely disabled themselves from restoring to Mr. Maclean. It seemed to me against all principles of equity to permit the company, now when it has become involved in difficulties, to obliterate the history of its own conduct, and to treat Mr. Maclean as still the holder of the shares, or rather scrip, which the company had bought, sold, and again set afloat in the share market. Accordingly, Mr. Maclean's name was removed from Part I. of the list of contributories.

On the second day of the revision of Part II. of the list, the learned *Advocate General*, for the official liquidator, de-

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clined to press any further his claim on behalf of the company to retain the names of the original allottees of the two thousand shares on the list. Therefore, and for the reasons which I have already given as to these shares, as also for many of those which I am now about to give with regard to the five thousand shares, the names of those gentlemen, so far as they represent, on Part II. of the list, any of the two thousand shares, must be removed from it. The learned *Advocate General* still contended that the original allottees of the remaining five thousand shares must remain on Part II. of the list. He relied to some extent on the fact that the company had not resold the scrip, but still retained it in its possession, and he laid much stress upon the 16th Article of Association :—"That every person who shall from time to time be or appear registered in the register of shareholders as the proprietor of any shares shall, unless and until his share, by operation of law or otherwise, shall become vested in some other person, be treated and recognised by the company as the lawful and rightful proprietor of such share, although in fact he may have been improperly so registered, and no other person claiming or entitled to be the proprietor of such share shall have any claim against the company in respect thereof, but only against the person who shall be so registered and his representatives."

It strikes me that the language of that article is scarcely applicable to the case of a purchase by the company itself, and is conversant rather with purchases by third parties from shareholders. It was evidently intended to protect the company from the claims of third parties who may have purchased shares, but have not come in and completed their title by procuring registration of the transfer in the company's books. The 1st Article of Association excludes the application of Table B annexed to Act XIX. of 1857. The 17th, 18th, and 19th Articles of Association are :—

"17. Any shareholder may sell and transfer all or any of his shares to *any person approved by the Board of Directors.*"

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"18. The instrument of transfer shall be signed by the transferor and transferee, and shall be in the form set forth in Schedule B hereunto written, or to the like effect, and the transferor shall be deemed the holder of such shares until the transferee is entered in the register of shareholders in respect thereof. Before registering any transfer, the company shall be entitled to receive, from the person applying for such registration to be made, a fee of four annas per share.

"19. The Board may decline to register any transfer of shares made by a shareholder who is indebted to the company."

Those three articles, like Article 16, savour rather of transfers by shareholders to third parties than of transfers to the company. But there remain the 17th and 18th sections of the repealed Act XIX. of 1857, relating to and insisting upon registration of transfers, which, it may be said, were law at the time of the purchase by the company of the five thousand shares. There are, however, many cases which show that although the formalities prescribed by a statute or by the Articles of Association have not been strictly complied with, yet the company and the purchaser may by their acts have estopped themselves from denying that the transferee is a shareholder. Several of those cases are collected in Mr. Thring's work on Joint Stock Companies, published in 1861 (page 51). I would more especially refer to *Watson* v. *Eales* (*b*) and *Gordon's case* (*c*). [Here His Lordship adverted at some length to those cases.] In all of those cases, however, there was a transfer, though an imperfect one, and registration of the transfer. In the two latter cases, indeed, the registration was more or less open to impeachment. The transferees in all were third parties, not the company itself as here. Hence those cases do not decide the present case. I merely quote them as instances in which public companies have been precluded by their conduct from insisting on formalities of transfer prescribed by the Legislature, or by their Articles or Deed.

(*b*) 3 Jur. N. S. 53. (*c*) 3 D. & Sm. 249.

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A leading case developing the same principle is *Bargate and Shortridge* (*d*). Shortridge had been a shareholder, but had sold his shares to another person, and the transfer thereof to him was registered in the company's register. By one of the rules of the company, no person was to be registered as a shareholder without the consent of a board of directors; and in that case no such consent had been obtained; and some time after the transfer had been registered, the directors declared the transfer void, put Shortridge again on the list, and returned him as a shareholder. They did this for the express purpose of enabling a creditor to proceed against him. It appeared that transfers had been for years registered like the one in question, without the observance of the formalities required by the company's Deed. The House of Lords affirmed the decree of the Master of the Rolls, declaring that Shortridge was no longer a shareholder; and granted an injunction to stay the creditor, who, it was established, was proceeding against him at the instigation of the company. The House of Lords based their affirmance of the decree upon the ground that the company could not take advantage of the non-observance by its own officer of formalities required by its own Deed. The imperfect transfer in that case was to a third party, but the reason given by the House of Lords seems still more applicable to such a case as the present, in which the company themselves were the purchasers of the s hares.

I must, however, admit that I have been unable to find any precedent which goes the full length to which it is necessary that the Court must go in the present case to exonerate the original allottees. The nearest case to it is *Taylor and Hughes*, decided in the Court of Chancery in Ireland by Lord St. Leonards in 1844 (*e*). It in some respects resembled *Bargate and Shortridge*. The plaintiff was originally the cashier of the company (the Agricultural and Commercial Bank of Ireland), and afterwards became a director. [His Lordship here stated the facts of the case.] As to three thousand shares of the bank allotted to the plaintiff, Lord St.

(*d*) 5 H. L. Ca. 297. (*e*) 2 Jo. & L. 24.]

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Leonards says: "The only difference between these cases (cases of other directors of the bank to whom shares had been allotted, which they retransferred to the bank, and received back bills of exchange which they had given to the bank for them) and the present, is that the plaintiff sold twelve hundred of the three thousand, and did not retransfer the rest. But he regularly paid to the bank £1,260, the price agreed upon for the shares which he sold, and although no actual retransfer of the remaining shares was executed, yet his bill for the £3,150 was returned to him, and is regularly entered in the books as for the repurchase from him of the three thousand shares; and the account was regularly closed. I think it clear that this transaction cannot now be opened, but is binding in equity, notwithstanding the provisions of the Act of Parliament (6 Geo. IV., C. 42, Sec. 22) and of the deed of settlement." I should mention that Taylor's name in respect of these shares had by the directors been removed from the register, but had, before the commencement of the suit, been restored again to the register by the winding-up committee. With respect to other shares purchased from Taylor by the bank, besides objections to the power of the bank to purchase them, it was argued that some of the assignments were not valid. As to that objection Lord St. Leonards said:—"I think that cannot prevail, for transfer was in effect to the company, and they thought fit in some instances to dispense with the machinery which the Legislature rendered necessary in such a case. This they were at liberty to do, even at law, according to the *Cheltenham Railway case*; and they cannot now, as between themselves and the partners with whom they contracted, impeach the transaction." It was next objected that the assignments, if valid, were not registered, and Lord St. Leonards thus disposed of that point:—"The fourth objection is of the same nature: but an assignment may be valid, and a member's name duly registered in lieu of the seller's, although, by the 9th Sec. of Stat. 1 Wm. IV., the transfer is not registered until a later period. The duty, moreover, of making a return of transfers seems under the Act to devolve on the company, and, if so, they cannot take advantage of their own neglect.

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The evidence proves that transfers were constantly accepted by the company, and that some were defective from want of attention on the part of their officers."

The case of *Stray* v. *Russell* (*f*) shows that even in ordinary cases, between transferor and transferee, the duty of procuring registration of transfer lies rather upon the transferee than the transferor. It was, moreover, the duty of the company to keep its register properly. Secs. 14 and 16 of Act XIX. of 1857, and Sec. 24 of the Indian Companies' Act of 1866, are express upon that point. Having become, in equity at least, the owners of the scrip for five thousand shares, I think that, although no transfers had been executed to them by the allottees beyond the indorsement of that scrip, yet the company would have been perfectly justified in issuing in its own name share certificates for the five thousand shares, and should have registered them in its own name.

In the case of *The Cheltenham Great Western Union Railway Co.* v. *Daniel* (*g*), referred to by Lord St. Leonards, an original subscriber to a projected railway company sold his scrip to the defendant; the company, after its formation, had notice of this sale from the defendant himself; he claimed to be registered in respect of the scrip which he had purchased, and he sent the certificates for such scrip to the company. The company gave him a receipt for the certificates, and registered him as a shareholder. It was held that he was properly registered, and that he was a shareholder, although the shares purchased by him had never been formally transferred to him from the vendor, as required by the company's special Act, and although the scrip certificates purported to be not transferable before the obtaining of the Act.

The learned Advocate General cited *Stanhope's case* (*h*), which was decided by Lord Cranworth in conformity with *Spackman's case* (*i*), decided by Lord Westbury, both decisions of high authority. But they proceeded on the ground that the acts of the directors were *ultra vires*, and

(*f*) 1 E. & E. 888.
(*g*) 2 Q. B. 281.
(*h*) Law Rep. 1 Ch. Ap. 161.
(*i*) 11 Jur. N. S. 307.

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that they could not be permitted to pervert their power of forfeiting shares, so as thereby, collusively with shareholders, to relieve them of their responsibility as such. Nor does the case of *Jamnádás Savaklál* (*j*), which was also mentioned, apply in the present instance. The purchases there were made by certain directors in their individual capacity, not as here by the directors in a body on account of the company.

They, so far back as January 1865, caused three lists to be made out, by their principal officer, Mr. Weatherhead, of the shares of the company—one containing shares still in the market, a second containing shares mortgaged to the company, and a third containing shares purchased by the company. That third list contained the whole of the five thousand shares, and is an ample acknowledgment by the directors (who represented the company in this matter) of the purchase of those shares for the company. Further it appears, on the evidence of Mr. Weatherhead, that no notice of the second call was issued to the original allottees of those five thousand shares. The company, therefore, through its directors, have, not only by the act of purchase, but by their subsequent conduct, treated themselves as the owners of the shares. They cannot, I think, be permitted to take advantage of their own neglect or that of their officers, in not registering the five thousand shares in the name of the company; and, although not altogether without hesitation, I have come to the conclusion that the names of the original allottees of the five thousand shares must be removed from Part II. of the list of contributories.

The result, therefore, is that all of the names in Part II. must be removed, as well the allottees of the two thousand shares as those of the five thousand shares, and the name of the company substituted as holders of the whole seven thousand shares.

No costs to the original allottees.

Application granted.

(*j*) *Antè*, p. 125.