

Original Suit No. 50 of 1866 ; Appeal No. 75.

MA'NEKJI SORA'BJI *Plaintiff & Appellant.*

C. N. CA'MA' and others . . *Defendants & Respondents.*

*Illegal Company—Suit against, to compel delivery of share certificates—
Acts XIX. of 1857 and VII. of 1860—Partners.*

In a suit brought by a transferee of shares in a joint stock banking company, formed after the passing of Act VII. of 1860, and neither incorporated nor registered when the plaint was filed, to compel the directors, trustees, and public officer of the company to give up the share certificates which had come into the possession of the bank, or to pay damages to the plaintiff :—

Held (by *Couch, C.J.*, and *Sargent, J.*, affirming, in appeal, the decree of *Arnould, J.*) that, the company being illegal, under Sec. 2 of Act XIX. of 1857, the suit was not maintainable.

A PPEAL from the decision of Sir Joseph ARNOULD, J.

The original suit was brought by the plaintiff as shareholder of the Central Bank of Western India, which, when the plaint was filed, was neither incorporated nor registered. The first four defendants were the directors of the bank, the fifth, sixth, and seventh were the trustees, and the eighth (Jehángir Gustádji) was one of the public officers of the company appointed under Clause 191 of the Deed of Settlement.

The plaint stated that the plaintiff was the registered holder of 275 original and 152 additional shares in the bank ; that all the calls, heretofore made, had been paid ; that the plaintiff was not indebted to the company ; that the certificates of the said shares came into the possession of the defendants, and now remain in their possession ; that the plaintiff had applied for the certificates, but the defendants refused to give them up ; and the prayer was that the defendants, or some of them, may be decreed to deliver up the certificates, or to pay to the plaintiff Rs. 90,524.

The written statement alleged (paras. 2 and 3) that the shares originally stood in the name of N. A. Dávar, the master of the plaintiff, who was largely indebted to the bank ; (para. 4) that the said Dávar had, without consideration, transferred the shares to the plaintiff, for the purpose of de-

1866.
August 6.
O. S. No. 50
of 1866.

1866.
August 6.
O. S. No. 50
of 1866.

laying the just claims of the bank, and that the plaintiff was a mere trustee; (paras. 5 and 6) that Dávar, in the list of his property given to his creditors, had set down 427 shares of the bank; and that, pursuant to the power given by Clause 19 of the Deed of Settlement, and the notice printed at foot of the second issue of shares, the bank was entitled to retain these shares.

The suit was heard before ARNOULD, J., on the 6th of August 1866.

Scoble and Green for the plaintiff.

Pigot and Ferguson for the defendants.

The following issues were framed: (1) whether the allegations in the 4th para. of the written statement, or either or any of them, is true; (2) whether, if true, they constitute any defence to the suit; (3) whether, at the time of the transfer of the said shares to the plaintiff, N. A. Dávar was indebted to the bank; (4) whether the bank was entitled to retain the said shares.

Pigot:—Since the written statement was filed, a meeting of the bank has been held, at which a report of the directors was read, in which (amongst other things) it was stated that one-fourth of the capital actually paid up had been lost. By Clause 198 of the Deed of Settlement, dated 19th November 1860, it is declared that “if, and when, it shall appear upon, or be certified by, any report of the auditors, or any report of the directors, that one-fourth of the capital actually paid up has been lost, in the course of business or otherwise, then, and in such case, the company shall thereupon be *ipso facto* dissolved.”

Further issues: (5) whether by reason of its appearing in a report of the directors, read at a meeting of the bank on the 12th of July last, that one-fourth of the paid-up capital of the bank had then been lost, the company was not thereupon, under Clause 198 of the Deed of Settlement, *ipso facto* dissolved; (6) whether the suit can be further maintained, either as against the company, or as against the defendants personally.

Green:—Under Sec. II. of Act XIX. of 1857, the carrying on business by a company without registration is prohibited, and, as its consequence, members of such a company are severally liable, and may be sued without joining the other members. It may indeed be said that the carrying on of business by such a company is illegal. [ARNOULD, J.:—Then how can you ask the court to compel an illegal company to transfer shares, which, as part of their business, is against the prohibition of the Act? Besides, the maxim *in pari delicto melior est conditio possidentis* applies; the plaintiff being, as registered shareholder, a member of an illegal company.] He does not sue the company; but certain persons, who, under the Deed of Settlement, represent the company, and are primarily liable, with a power to indemnify themselves against the partnership; and that liability does not cease by any *ipso facto* or other dissolution of the so-called company.

1866.
August 6.
O. S. No. 50
of 1866.

Pigot, contra:—If the defendants are sued as personally liable, the plaintiff, as a registered shareholder, and therefore a partner, cannot proceed in this form of suit.

ARNOULD, J., gave judgment for the defendants, in whose favour he found on the 5th and 6th issues.

The appeal came on for hearing this day before COUCH, C.J., and SARGENT, J.

Nov. 16.
Appeal No. 75.

Green, for the appellant, contended that giving a certificate for shares in the company would not be carrying on trade or business with gain for its object, within the meaning of Sec. II. of Act XIX. of 1857. The plaintiff merely asked for *indicia* of proof that he was a member of the company; and the defendants by giving such would not be furthering any illegal object. The following cases were cited:—*Sharpe v. Taylor* (a), *Butt v. Monteaux* (b), *Shepherd v. Oxenford* (c), *Greenham v. Gray* (d).

Pigot, contra:—In the cases cited the object sought was the preservation of property, which a court of equity always looks to. Here the plaintiff asks for a certificate, in order

(a) 2 Phillips 801. (b) 1 K. & J. 98. (c) Ibid. 491. (d) Ir. Com. L. Rep. 501.

1866.
Nov. 16.
Appeal No. 75.

to establish his claim in some other proceeding. The only claim against the directors is on the ground of their duty under the Deed of Settlement, and their acting in the way required by the plaintiff would be carrying on business, which is prohibited by the Act. The plaintiff cannot sue his copartners in damages for not performing their duties as partners. He may sue them for an account, and to have his share ascertained.

COUCH, C.J. :—In this case I consider that the learned Judge, in finding the 6th issue for the defendants, found that the suit could not be maintained, in consequence of the illegality of the company.

Act XIX. of 1857 (with which Act VII. of 1860, relating to joint stock banking companies, is incorporated by Sec. xi. of that Act), after declaring that it is expedient that the law relating to the incorporation and regulation of joint stock companies and other associations should be amended and that their members should be enabled to limit their liability for the debts and engagements thereof, proceeds to enact by Sec. i. that “Seven or more persons associated for any lawful purpose may, by subscribing their names to a Memorandum of Association, and otherwise complying with the requisitions of this Act in respect of registration, form themselves into an incorporated Company, with or without limited liability.” And by Sec. ii. that “Not more than twenty persons shall, after the first day of January 1858, carry on in partnership, in any part of the territories in the possession and under the government of the East India Company, any trade or business having gain for its object, unless they are registered as a Company under this Act, or are authorised so to carry on business by an Act of Parliament, or by Royal Charter or Letters Patent, or by an Act of the Governor General of India in Council.”

Now, the Deed of Settlement of this Company recites that the several parties thereto have agreed to raise among themselves a certain amount of capital, to enable them to carry on the business of banking upon the terms and conditions, and under and subject to the several provisions and regulations

thereinafter contained ; thereby giving to the company all the qualities and attributes of a company registered under the Act.

1866.
Nov. 16.
Appeal No. 75.

When the plaint was filed this company was neither incorporated nor registered ; and the plaintiff brings the suit to compel the defendants to deliver up to him certificates of shares in this illegal company, or to pay to him by way of damages Rs. 90,524.

If we were to hold that the plaintiff was entitled to the relief which he seeks, we should be giving to a company not registered under the Act, and prohibited by it from carrying on business, the privileges which a legally constituted company would have.

I am, therefore, of opinion that the judgment of the court below should be affirmed. If the plaintiff has acquired any right to sue as partner, he may do so.

SARGENT, J. :—I quite concur.

Decree affirmed.

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

Attorneys for respondents : *Keir, Ramsden, and Prescott.*
