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The company have wisely guarded themselves against responsibility for that insufficiency, and cannot be now compelled to forego the benefit of the stipulation.

Decree reversed with costs.

Acland, Prentis, and Bishop, Attorneys for the plaintiff.

Crawford and Hurrell, Attorneys for the defendants.

Suit No. 1553 *of* 1866.

Aug. 2.

JEHA'NGIR RASTAMJI MODI .....*Plaintiff.*

SHA'MJI LA'DHA' *et al.* .....*Defendants.*

Joint Stock Company—Directors—Shares—Purchase ultra vires—*Trustee Shareholder—Acquiescence.*

The purchase by the Directors of a joint stock company, on behalf of the company, of shares in other joint stock companies, unless expressly authorised by the Memorandum of Association, is *ultra vires.*

A joint stock company, even though it be empowered by its Memorandum of Association to deal in the shares of other companies, is not thereby empowered to deal in its own shares, and a purchase by the directors of the company of its own shares on behalf of the company is, therefore, under such circumstances, *ultra vires.*

A shareholder in a joint stock company can maintain an action against the directors of such company to compel them to restore to the company funds of the company that have by them been employed in transactions that the directors have no authority to enter into, without making the company a party to the suit.

Where a shareholder purchased shares in a joint stock company knowing at the time that similar companies were in the habit of dealing in their own shares and those of other companies, and believing that the company in question adopted the same practice, but made no inquiry to ascertain whether or not such was the case, nor made any objection to such dealings of the company until it was discovered they had resulted in loss, it was held that he had by his own conduct lost his right to hold the directors personally liable in respect of such dealing, and the result was held to be the same whether the said shareholder was beneficially entitled to his shares, or merely a trustee of them for others.

THE plaint stated that (I.) the plaintiff was the registered shareholder of 601 shares in the Financial Association of Europe and India (Limited) registered under Act XIX. of 1857.

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II. That the defendants were the original directors of the association, with one Govind Girdhar, and ever since continued to act as such.

III. That the objects of the association, as defined in the Memorandum of Association, did not include dealing in shares, nor the purchase of the company's own shares; yet the defendants as directors did deal in shares, and thereby incurred losses on behalf of the company, and did purchase 1,422 shares of the company.

The plaintiff, therefore, on behalf of himself and the other shareholders of the company, prayed—

(*a*) That the defendants should account for all dealings in shares purporting to have been entered into by them on behalf of the company, and should pay all losses thereby incurred to the company.

(*b*) That the defendants should repay to the company all moneys of the company expended by them in the purchase of the company's shares.

(*c*) That the shares of the company so purchased should be entered in the register of the company in the defendants' names, or in the name of some one of them on behalf of the others.

(*d*) For further and other relief.

The defendants put in a written statement in which they stated—

I. That the plaintiff was not the beneficial owner of the shares mentioned in the plaint, but was only a trustee of them for two other persons, and that he, therefore, could not maintain the suit.

II. That the Financial Association ought to have been made a party to the suit.

III. That they, as directors, had power to deal in the shares of joint stock companies, including the shares of the association.

IV. They admitted that they had dealt in shares, including the shares of this association. The said dealings down

to the 31st of December 1865 were stated in the report and audited balance sheet submitted to the general meeting of the shareholders of the association, held on the 2nd of July 1866, at which meeting a resolution was duly proposed and seconded that the audited balance sheet and report for the year ending 31st December 1865 be adopted. To this an amendment was proposed by the plaintiff, and duly seconded, that, "as the balance sheet contained an account of the purchase and sale of joint stock companies' shares on account and at the risk of the association, and, as it appeared from the Memorandum and Articles of Association that the directors had no power to deal in these shares, the balance sheet, and profit, loss, and loan account be amended to that effect." On the said amendment being put to the vote, it was lost, and the original resolutions carried. They submitted that, under Cl. 92 of the Articles of Association, the balance sheet and transactions mentioned in it had become binding against the shareholders;—at any rate, that the plaintiff ought to have brought his suit within three months.

V. and VI. Since the said 31st of December 1865 the directors purchased 1,750 shares in the association, which did not appear in the first balance sheet, and that these purchases were made in accordance with resolutions of the Board to that effect in the *bonâ fide* exercise of the powers conferred on them.

VII. That the said shares stood in the name of trustees for the association, and that the purchase of them was beneficial to the association.

VIII. That the beneficial owners of the plaintiff's shares were aware of the purchases made by the directors.

Memorandum of Association, Cl. 3:—"The objects for which this company is established are the following:—The purchase and sale on commission of stocks, shares, debentures, and other securities; the making of advances on such securities as the directors of the company may think fit; the receipt and employment of loans and deposits; the negotiation and making of loans and subsidies for public or

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private purposes or undertakings; the introduction, establishment, aiding, and assisting of public and other companies, undertakings, and enterprises; the conduct and management of exchange operations; the conduct and management of such other operations, undertakings, and enterprises of a financial character as the directors of the company may think fit, and the doing of such things as are incidental or conducive to the attainment of the foregoing objects."

Articles of Association, Cl. 81 :—"The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies, or for equalising dividends, or for repairing or maintaining buildings of the company, or any part thereof, and the directors may invest the sum so set apart as a reserved fund upon such securities as they may think fit."

Cl. 92 :—"Every account or balance sheet when audited and approved by a general meeting shall, as to the matters contained therein, be conclusive as against the company and the shareholders therein, except as regards any error discovered therein within three months next after the approval thereof, and whenever any such error is discovered within that period and shown to exist, the account shall forthwith be corrected, and thenceforth shall be conclusive as aforesaid."

Cl. 112 :—"All investments on behalf of the company, whether on account of the reserve fund or otherwise, and all property, moveable or immoveable, personal or real, to which the company may become entitled in the course of its business, and which it may be necessary or advisable to vest in the company or in some person on its behalf, and all contracts or engagements which the company may have occasion to make and enter into may be made and vested, or made and entered into, either in the name of the company, or in the name or names of, or in one or more of, the trustees, or of or in such other officer or person as the Board may think fit, and such trustee or trustees, or other officer or person, shall be bound to act in respect to such invest-

ments, property, contracts, and engagements according to the directions of the Board, and in so doing shall be indemnified as hereafter mentioned."

The issues framed were—

(I.) Whether the company ought not to be made a party as defendant in this suit; (2) Whether the purchase of its own shares by the company was *ultra vires;* (3) Whether the purchase of shares in joint stock companies was *ultra vires ;* (4) Whether the purchase mentioned in the report and balance sheet referred to in the fourth paragraph of the plaint were adopted and ratified by a general meeting of the shareholders of the company, and if so whether such adoption and ratification rendered such purchase valid; (5) Whether, under the circumstances of the case, the plaintiff is estopped from instituting the present suit.

A sixth issue was subsequently added—(6) Whether the defendants can in any case be held personally liable.

The first issue was abandoned on the learned Judge intimating his opinion that the company was not a necessary party.

The second and third issues were argued, before SARGENT, J., on the 15th, 18th, and 19th of July 1867.

The Advocate General (*the Honorable L. H. Bayley*) and *Marriott* for the plaintiff.

Pigot, White, Mayhew, and *Green* for the defendants.

The following authorities were cited and commented on in the course of the argument :—

Colman v. *The Eastern Count. Rail. Co.* (*a*) ; *Bagshaw* v. *The Eastern Union Rail. Co.* (*b*) ; *East Anglian Rail. Co.* v. *Eastern Count. Rail. Co.* (*c*) ; *South Yorkshire* v. *Great Northern Rail. Co.* (*d*); *Shrewsbury and Birm. Rail. Co.* v. *London and N. W. Rail. Co.* (*e*) ; *Solomans* v. *Laing* (*f*) ; *Cohen* v. *Wil-*

(*a*) 16 L. J. Ch. 73. (*b*) 19 L. J. Ch. 410.
(*c*) 21 L. J. C. P. 23. (*d*) 3 DeG. Macn. & G. 576—9 Exch. 55.
(*e*) 26 L. J. Ch. 182; 6 Ho. Lo. Ca. 113. (*f*) 19 L. J. Ch. 291.

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kinson (*g*); *Mayor of Norwich* v. *Norfolk Rail. Co.* (*h*); *Great W. Rail. Co.* v. *Metropolitan Rail. Co.* (*i*); *Hodgkinson* v. *Nat. Live Stock Ins. Co.* (*j*); *Morgan's Case* (*k*); *Lawes's Case* (*l*); *Coust* v. *Harris* (*m*); *Natush* v. *Irving* (*n*); *Stanhope's Case* (*o*); *Simpson* v. *W. Palace Hotel Co.* (*p*); *Gregory* v. *Patchett* (*q*); *Joint Stock Discount Co.* v. *Brown* (*r*); *E. of Shrewsbury* v. *Nth. Staff. Rail. Co.* (*s*); *Burt* v. *British Nation. Co.* (*t*); *Charlton* v. *Newcastle and Carlisle Rail. Co.* (*u*); *Phœnix Life Ins. Co.* (*v*); *Taylor* v. *Hughes* (*w*); *Evans* v. *Coventry* (*x*); *Spackman's Case* (*y*).

Cur. adv. vult.

July 22. SARGENT, J.:—In this case I have thought it advisable to decide the questions raised by the second and third issues before proceeding with the further hearing. They are—(1) Whether the alleged purchases by the company of shares in other companies are *ultra vires;* (2) Whether the alleged purchases by the company of its own shares are *ultra vires.*

A long series of decisions of the courts of Law and Equity in England has decided that an incorporated joint stock company can do no act which is not expressly or impliedly authorised by the Act of Parliament under which it is incorporated, or the Deed of Settlement of the company. In the present case the company was incorporated under Act XIX. of 1857; and it has not been contended that there is any clause in that Act authorising the transactions now under consideration. It is, therefore, to the Memorandum and Articles of Association that we must turn to determine whether those transactions are expressly or impliedly authorised; or, as it has been sometimes expressed, whether they fall

(*g*) 18 L. J. Ch. 411. (*h*) 4 E. & B. 397. (*i*) 32 L. J. Ch. 382
(*j*) 5 Jur. N. S. 478 and 969. (*k*) 1 Macn. & G. 225.
(*l*) 20 L. J. Ch. 295. (*m*) Turn. & R. 496. (*n*) 2 Coop. C. C. 358.
(*o*) 19 L. J. Ch. 389. (*p*) 29 L. J. Ch. 561; 8 Ho. Lo. Ca. 712.
(*q*) 10 Jur. N. S. 1118. (*r*) 12 Jur. N. S. 899.
(*s*) 1 L. R. 593. (*t*) 5 Jur. N. S. 355 and 612.
(*u*) 5 Jur. N. S. 1096. (*v*) 31 L. J. Ch. 340.
(*w*) 2 Jones & Latouch 112. (*x*) 5 DeG. Macn. & G. 911.
(*y*) 1 Macn. & G. 170.

within the scope of the objects for which the company was established.

It is right to state at the outset that the purchases of shares in other companies are admitted by the directors to have been made out of the subscribed capital of the company and in the ordinary course of business, and with the view to the shares being resold, and a profit obtained for the company; and that contracts were entered into for the sale of these shares for both immediate and future delivery. They were distinct acts forming no part of any larger enterprise, which might or might not have been legally engaged in by the company, and as such must stand or fall.

Now the third section of the Memorandum of Association states the objects for which the company was established; and the first clause that has been pointed to as authorising such purchases is "the receipt and employment of loans and deposits." It is contended that deposits must here mean the deposits paid by allottees; and that, as no restriction is placed upon the mode of employing such deposits, these purchases would be clearly a legal application of the funds. The context seems to me to show clearly that the deposits alluded to in this clause are deposits which it required a direct authority to the company to receive. The section (omitting intervening words) says that the object for which this company is established is the receipt of deposits. Now by the objects for which a company is established are of course meant the operations to be carried out after the company is formed, and cannot refer to acts which precede the formation of the company, and which must *ex necessitate rei* have been performed before the company can be said to have an object at all, or at least to be capable of realising one. I can feel no doubt, therefore, that the deposits referred to in this clause are the sums which, since the establishment of joint stock companies, it has become not uncommon for individuals to pay, more generally it may be into banks, but which it was supposed they might also pay into this company, either for temporary safe custody, or for longer or shorter periods upon such terms as the parties should agree.

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It was next contended that the purchases in question were operations and enterprises of a financial character, and as such authorised by the clause which states that one of the objects of the company is "the conduct and management of such operations, undertakings, and enterprises of a financial character as the directors of the company may think fit." It must be admitted that shares are securities within the contemplation of the framers of the Memorandum of Association. The very first clause describes them as such in conjunction with stocks and debentures; and I think it must also be conceded that the purchase of securities is a financial operation: but the difficulty lies in the language which has been employed in describing the part which the company is to play in these operations, undertakings, and enterprises. The words are "the conduct and management of such operations, undertakings, and enterprises." In other words, the company is "to conduct and manage these operations." Do not these words point clearly to operations carried on for and on account of other persons, and not to operations undertaken by the company *proprio motû* for its own benefit and profit? Surely, if this was not the intention, the words "engage in" and "undertake" would have been employed. It seems to me that the language has been studiously selected to confine these financial operations to those in which the company should act as agent or auxiliary, and not as principal.

It was asked in what sense they could be said to conduct and manage exchange operations otherwise than as principals. The answer is, by doing all such acts as would be incidental or conducive to the success of the exchange operation which the party applying to the company might wish to effect.

It was then contended that by Sec. 112 of the Articles of Association, which speaks of investments, on account of the reserve fund or otherwise, in moveable or immoveable property, no limitation is placed upon the mode of investment —indeed that in the case of the reserve fund the investment is, by Sec. 81, to be upon such securities as the directors

may think fit; and that securities, by Sec. 8 of the Articles of Association, include shares. Now the object of this section was solely to provide for the vesting of all property to which the company might become entitled, in the course of its business, in such trustees as the company might appoint; and, as might be expected, the largest possible words are employed to meet every case that could possibly arise. Doubtless those words include shares; but shares might become legally vested in the company in a variety of ways, either by being bought on commission, and not transferred for a longer or shorter period, arising out of the numerous circumstances which cause delay in such transactions, or by the repudiation of the purchases by the principals for whom the company may have acted, or by being taken as a security for loans, or in the course of introducing or assisting other companies. I mention these particular cases to show how necessary it was in a section, framed with such an object, to employ general terms, and that nothing can be inferred from the general description of property there used as to whether any particular transaction is or is not within the powers of the company. On the other hand, it is to be remarked that, assuming the general words "conduct and management of such operations, undertakings, and enterprises as the directors may think fit" to refer exclusively to operations in which the company embarks for or on account of other persons, the principle of *expressio unius exclusio alterius* would be clearly applicable in this case. The very first object of this company is said to be "the purchase and sale of shares on commission," which, in the absence of any general words (and *ex hypothesi* there are none), would exclude purchases by the company on its own account for the purpose of profit in the way of business.

The conclusion, therefore, that I have arrived at—I will not say without hesitation—is that these purchases were not within the power of the company. It may be that the company might purchase shares for the purpose of introducing or assisting other companies, and that it might do

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so as incidental or conducive to the conduct and management of a financial operation or enterprise; but the purchase of shares *proprio motû* for the purpose of re-sale, and thus deriving profit—as a distinct transaction, and forming no part of the larger operations to which I have before referred—was, in my opinion, *ultra vires*.

It remains now to consider whether the alleged purchases by the company of its own shares were *ultra vires*. After the decision I have come to on the first question, it is not, strictly speaking, necessary for me to refer to those arguments which derive their force from the assumption that the purchase of shares in other companies is not *ultra vires*.

I am unwilling, however, to decide only half the question, and shall, therefore, consider it under its twofold aspect. And first I assume, for the sake of argument, that the purchase of shares in other companies is not within the scope of the objects of the company. There is, therefore, no authority to the company to buy its own shares to be implied from the objects for which the company was established; and as the Articles and Memorandum of Association contain no express authority, the purchases in question were made without any authority, express or implied, contained in the contract of partnership between the shareholders.

Now, a long series of decisions in equity has determined that, if such authority be wanting, purchases by directors of shares from individual shareholders are *ultra vires*. The earliest case in which the validity of these purchases would seem to have called for a decision is that of *Taylor* v. *Hughes* (*ubi suprà*), but, as Lord St. Leonards decided that the purchases were expressly warranted by the Deed of Settlement, the case throws no light on the question under consideration.

In *Morgan's Case* (*supra*), which was a purchase of shares from shareholders with a view to raising funds to meet the pressing wants of the creditors, Lord Cottenham held that there could be no valid sale of shares to the company except under the special circumstances in which the company had express authority to purchase, and that the sales in question, not having taken place under those special circumstances,

were consequently invalid. In the case of *Evans* v. *Coventry*, (*ubi suprà*), before Vice-Chancellor Kindersley, which was a suit by certain persons assured in the General Life Assurance Company to compel the directors to restore the capital expended in the purchase of shares of the company, the Vice-Chancellor seems to have assumed that, as there was no express authority to the directors to buy shares for the company, the purchases were *ultra vires*; and then proceeds to give other reasons, having special reference to the relation of trustee and *cestui que* trust which he had previously decided was created between the directors and the insured.

In *Spackman's Case*, before Lord Westbury, and in *Stanhope's Case*, before Lord Cranworth, it was assumed that the sales to the directors, unless they could be regarded as effected under the power to compromise, were *ultra vires*, and the important question was whether the company was estopped by lapse of time and by other circumstances from disputing the validity of the sales.

There are other cases, such as the *Joint Stock Discount Co.* v. *Brown*, and *Gregory* v. *Patchett*, decided upon demurrer, in which observations of the learned Judges to the same effect may be found; but, as they are decided upon strict grounds of pleading, they cannot be cited as conclusive authorities.

These decisions are, in my opinion, conclusive that purchases by directors of shares of a company in the absence of authority are *ultra vires*.

It remains to consider the question on the assumption that the purchase of shares generally is within the scope of the objects for which the company was established.

It is said that the company's own shares are bought and sold in the share market, like all other shares, and that if the business of the company is to speculate in shares there can be no reason why it should not speculate in its own shares, and that there is an implied authority to the company to purchase its own shares, from the general character of its business. Now, in the first place, by the objects for which a company is established are *primâ facie* meant the opera-

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tions it is intended to engage in with third persons for the purpose of profit. Those third persons, it is true, may be individual shareholders acting as individuals. As such they come within the purview of Sec. 3 of the Memorandum of Association, like other persons. But as shareholders dealing with their shares, their relations with the company must be sought for in the other provisions of the Memorandum and Articles of Association. Indeed, it is almost a contradiction in terms to say that one of the objects of the company is to contract with its own shareholders for the purchase of its own shares.

It, therefore, appears to me that, according to the ordinary rule of construction, Sec. 3 must be read with regard to its subject-matter, and that its subject-matter being *ex vi termini*, the various descriptions of business which the company may engage in with individuals *dehors* the company, and not with shareholders acting as such, the dealing in shares, so far as it derives its legality from Sec. 3, must be confined to dealing in the shares of other companies. So far I have proceeded upon what may be considered a technical view of the subject.

If it be said that, although authority to the company to buy its own shares cannot be considered as given by Sec. 3, it may yet be inferred from it, the answer is that no inference can reasonably be drawn respecting transactions which cannot be supposed to have been within the contemplation of the framers of the section. Again, by the purchase of a share of the company, it is true that so long as the share purchased retains its value there is not substantially any reduction in the capital, and the risk of the value of the share falling is the same as there would be in the purchase of shares of other companies, which *ex hypothesi* is within the scope of the business; but there is this important distinction, that in the case of the purchase of the company's own shares the liability of the remaining shareholders is increased. No new shareholder is placed upon the register in lieu of the outgoing shareholder, for although the trustee in whose name the shares may be entered on behalf of the company is liable to be placed on the list of contributories in the event

of the company being wound up, it is the company, that is, the remaining shareholders, who are ultimately liable to creditors. The share has been virtually purchased by an abstraction, and the personal liability, which would in ordinary cases have passed to the transferee, has, in this case at least to the extreme limit of their liability, been saddled on the remaining shareholders.

Again, the Articles of Association, which are the contract of partnership between the shareholders, and by which all are bound, authorise the transfer of shares by a shareholder in a certain mode, namely, by the transfer of his shares to another person; but in the case of a purchase by the company, although there is nominally perhaps a transfer to another person, there is really only a transfer to an abstraction. These provisions were intended for the security of the shareholders, and to determine the mode in which shareholders may withdraw from the partnership. Are all these considerations to be deemed to have been waived, so to speak, by the shareholders, and the express provisions of the Articles of Association to be virtually rescinded, by the mere circumstance that the purchase of shares generally is authorised by a section the sole object of which is to determine the object and purpose of the company? I think that such would be a most unreasonable and strained inference.

I have already pointed out that technical considerations forbid any inference being drawn from Sec. 3 as to transactions which whether carried out in the directors' room or in the share market are alike transactions between the company and the shareholders as such; but the considerations lastly mentioned would, in the absence of any such technical rule of construction, be sufficient, in my opinion, to preclude the extension of the provisions of Sec. 3 to any contract entered into with the shareholders as such. The relations between the company and shareholders must be sought for in other sections than those which determine the objects for which the company was established, and if no authority is elsewhere given (and in the present case it is not alleged that there is), it is impossible, consistently with

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the decisions already cited, to decide otherwise than that these purchases by the company of its own shares were *ultra vires*.

I have not arrived at this decision without some regret, as I cannot but be aware of a fact perfectly notorious, that it has been the practice not only of companies similar to this, but for other companies, to purchase their own shares, and that this decision may press somewhat harshly upon individuals; but at the same time if joint stock companies are to flourish, more especially in a country like this, it can only be by the public feeling assured that the Courts of Law, while refusing to interfere with directors in carrying out the objects of these associations into full and complete activity, will prevent the application of the funds of the company to other than the legitimate purposes and objects of the association. I, therefore, find both the issues in favour of the plaintiff.

The first three issues having been thus found in favour of the plaintiff, evidence was taken on the 22nd of July and subsequent days on the remaining issues, when the facts stated in the plaint and written statement were in substance proved.

Aug. 2. SARGENT, J.:—Before I proceed to the remaining issues in this case, I will refer to an objection that has been taken with reference to the power of a shareholder to bring a suit of this description against directors. The case of *Hodgkinson* v. *The Live Stock Insurance Co.* (*ubi suprà*) is on all fours with the present, and on the authority of that decision I have no doubt that a suit of this nature may be so brought. Then there are two preliminary objections, which it is also advisable to dispose of at present. The first of these objections is that the balance sheet adopted by a general meeting on the 2nd of July 1866 is, under Sec. 92 of the Articles, binding as against the company and the shareholders. Assuming that the section does apply to such a case as this, it is sufficient that the plaintiff, on discovering the error in the balance sheet, should draw the attention of the directors to it; and in point of fact he did

so at the general meeting of the 7th of July. It is difficult to see what more he could have done. The second objection is that, under Sec. 115 of the Articles, the directors are not personally liable "for any misfortune, loss, or damage happening to the company by reason of any deed or thing done or executed by any director or trustee in the execution of his office, or in relation thereto, or by reason of any error in judgment or mere indiscretion on the part of any director or trustee in the execution or performance of his powers or duties, or otherwise on any account whatsoever except only for wilful fraud or negligence." Now it is quite clear that this section refers to the liability of directors to the company arising out of the relationship of principal and agent in which they stand to one another, but in any case it is very questionable whether it can be taken to refer to anything but what was done in the execution of the powers or duties of the directors. I think, therefore, that the section is clearly not applicable to the case before the Court.

I now proceed to the remaining issues. The plaintiff is the registered holder of 601 shares in the defendants' association, the history of which may be shortly stated. [His Lordship here stated the facts which showed that the plaintiff was a trustee of these shares, and proceeded.] In my opinion the right of the plaintiff to institute these proceedings is quite independent of the question whether he is entitled to the beneficial interest in them. As the registered holder of the shares, he alone is liable to creditors, and he alone is liable to be placed on the list of contributories. He has, therefore, a direct interest in the proper application of the funds of the company, and a direct interest in their being restored if misapplied.

Again, there is no privity between the directors and the person beneficially interested in the shares. It is between the registered shareholder alone, and the directors, that the relation of trustees and *cestui que* trust is created, and out of that relationship springs the right to hold the directors liable for their breach of trust. It is, therefore

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equally clear as a co-relative proposition, that if the plaintiff would be estopped from filing this plaint if he were the beneficial owner of the shares, he will be equally so if he is only a trustee for others. His right to bring this action belongs to him only as shareholder, whether he brings it for the benefit of others or not.

Is the plaintiff then estopped by his own conduct from holding the directors liable for the alleged breaches of trust? It is admitted by the plaintiff that when he bought the fifteen shares in January 1865 it was well known that the financial corporation bought and sold shares generally; that he knew of no instance of their refusal, and that when he bought the shares he thought the defendants' company did like other financials. From that time till two or three days before the general meeting of the 2nd July he tacitly acquiesced in this description of business being carried on. He says indeed that at the end of June he did not know that the defendants' company had been buying their own shares. It may be that he did not personally know of any particular transaction, but is it possible to believe that the plaintiff, who was the Secretary of the Imperial Banking Corporation, in daily correspondence, as he says, with brokers, engaged in share speculations on his own account and living in the world of commerce, could have been ignorant of the share transactions which the defendants' company carried on in 1865 on a scale to result, as the plaintiff himself says, in a loss of sixteen lakhs of rupees?

I have no difficulty in inferring from all these circumstances that the plaintiff knew that the defendants' company carried on the business he now complains of, and acquiesced in it.

We have then here that acquiescence, albeit without original concurrence, on the part of *cestui que trust*, which Lord Eldon says, in *Walker* v. *Symonds*, releases the trustees from their liability. But let us suppose for a moment that the plaintiff had no personal knowledge that the defendants' company carried on this illegal business. It is true that there is no acquiescence without a knowledge of the circumstances. But here there is such a knowledge of the general practice of these companies, coupled with an entire

belief that the defendants' company did like the rest, as should have put the plaintiff on inquiry had he not acquiesced. Knowledge of so much of the circumstances as would put any reasonable man upon further inquiry is sufficient, and the very fact that he makes no further inquiry is the strongest proof that he acquiesces. Having assumed the character of a shareholder in a full belief that the company were engaged in this business like all other financial companies, having sought for no information from the company —having lain by for eighteen months, and tacitly acquiesced in what he fully believed was being done with the funds of the company, although by hypothesis he did not know it as a fact, can he now, because the business has resulted in a loss to the company, hold the directors liable for the consequences? I think not. Such conduct is certainly contrary to all notions of equity and justice, as those words are commonly understood—and I should be loth to think that it derived support from the principles acted upon in the Courts of Equity. I am, therefore, of opinion that the plaintiff is precluded from complaining of any of the illegal transactions previous to the meeting on the 2nd of July 1866. On that occasion he expressed his disapprobation of the practice, and from that time his acquiescence ceased.

Now the purchase-money of the 312 shares from the firm of Nasarvánji Dungarsi and Company was paid on the 6th and 12th of July, that is, subsequently to the general meeting, and was, therefore, a payment for which the directors rendered themselves liable. If the contract was illegal, the plaintiff is not estopped by his general conduct previous to the general meeting from calling on the directors to refund the moneys so applied. The same remark applies to another small transaction—subsequent to the general meeting the particulars of which I have not before me.

Whether or not the plaintiff knew of the sale of 312 shares cannot affect the question. It would not carry his acquiescence further than his general conduct does—that is, up to the time when he withdrew his consent at the general meeting.

As to the knowledge of Mihirvánji, and the firm of Nasarvánji and Company through him, that the sale was

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to the association, I have already stated my opinion that it cannot affect the plaintiff's right to have the misapplied funds restored to the company. To what purpose those funds, when restored, will be applied, must depend upon the future proceedings of the company. As the company is now engaged in winding up its affairs with a view to a dissolution, the moneys in question will either go towards payment of the debts, or form part of the assets divisible amongst the shareholders.

What right, if any, the directors may have (in the latter case) to refuse the plaintiff his share of the funds represented by the 586 shares, on the ground that the firm was cognisant of the real purchases of the 312 shares, I am not called upon to decide. The firm of Nasarvánji and Company are not parties to this suit; and, as their rights cannot be concluded, I shall forbear to say anything on the subject. I, therefore, find all the issues for the plaintiff, and pass judgment for the plaintiff, that the defendants do pay to the company the sum expended in the purchase of the 312 shares, and the other transaction I have before alluded to, and that the 312 shares of the company be transferred into their names in the books of the company. As to the other transaction, I am not acquainted with the exact nature of it—whether it was a purchase of shares in the defendant's own company or of some other company. The minutes of decree will have to be drawn up accordingly. The parties will pay their own costs.

Decree for the plaintiff without costs.