

THE INDIAN DECISIONS

NEW SERIES.

BOMBAY—VOL. VII.

ILLR., 13 BOMBAY.

13 B. 1.

ORIGINAL CIVIL.

Before Mr. Justice Scott.

IN RE THE BOMBAY ELECTRICAL COMPANY, LIMITED,
NUSSERVANJI DADABHOY KATRUCK'S CASE.
[7th July, 1888.]

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Company—Director—Qualification—Qualification shares not paid for by Director, but transferred to him by a third person—Agreement to take shares—Indian Companies Act VI of 1882, s. 45—Signing duplicate memorandum of association after registration of company—Effect of such signature only equivalent to a proposal to take shares—Acceptance.

Shares taken as a qualification for a directorship of a company need not be taken from the company. It is enough if they are taken in open market or from a friend within a reasonable time after acceptance of the office. They need not be shares for which the qualifying director has paid.

A., after the Bombay Electrical Company had been registered, signed a duplicate memorandum of association for five shares. He subsequently acted as director of the company, being qualified to act as such by procuring from a member of the company five fully paid up shares. The shares for which he subscribed were never allotted to him, nor was he registered as holder of them. The company went into liquidation.

Held, that A was not liable in respect of the five shares for which he subscribed. A person signing a duplicate memorandum of association is not bound as one who has signed the original memorandum, although such duplicate is signed after the company has been registered. Such a signature cannot be binding, because it does not amount to a signing of the memorandum itself, and does not satisfy the requirements of s. 45 of the Indian Companies' Act VI of 1882. It does not create the positive agreement which the law has made the necessary consequence of the signature of the real memorandum before registration. It only amounts to a proposal to take shares. But in the present case there had been no acceptance by the company of the proposal. There had been no allotment and no placing on the register. Acceptance could not be legally inferred from the [2] circumstances of the case. A's liability was only inchoate and never became complete. The company while it was solvent never accepted A's offer to become a shareholder, and after it went into liquidation it was too late.

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THIS was an application by the Official Liquidator of the Bombay Electrical Company, Limited, which was in liquidation, to put Nusservanji Dadabhoy Katruck on the list of contributories in respect of five shares, for which it was alleged he had duly subscribed, he having signed the memorandum and articles of association for two shares on the 23rd March, 1885, and for the remaining three shares on the 22nd June, 1885.

Nusservanji Dadabhoy Katruck contended that he was not liable. He alleged that the only shares he had held were five *fully paid up* shares which had been made over to him by one Premchand Roychand, in order to qualify him to act as a director of the company, which he admitted he had done. He denied that he was liable in respect of the five shares for which he had subscribed, inasmuch as he had only signed a copy of the memorandum of association.

The company was duly registered at Bombay on the 5th March, 1885, and went into liquidation on the 22nd July, 1886.

The affidavit of the Official Liquidator stated as follows :—

"1. The above-named contributory subscribed for five shares in the above company, of the nominal value of Rs. 1,000 each, and signed the memorandum and articles of association of the said company for two shares on the 23rd March, 1885, and for the remaining three shares on the 22nd June, 1885."

"3. From the books of the said company I find that the said Nusservanji Dadabhoy Katruck acted as one of the directors of the said company from the 24th day of August, 1885, and continued acting as such director till the resolution for winding up the said company was passed on the 22nd day of July, 1886, and attended thirty-one out of thirty-four meetings of the board of directors of the said company, and received from the company his fees for attending such meetings of the board.

"4. The said Nusservanji Dadabhoy Katruck has not paid to the said company the amount of the value of the said shares, or any part thereof, as appears from the books of the company."

[3] Nusservanji Dadabhoy Katruck in his affidavit denied that he had subscribed for five shares by signing the memorandum and articles of association. He stated that in February 1885, Premchand Roychand, one of the promoters of the company, proposed that he should take up the management of the company as well as of his (Premchand Roychand's) business generally; that in June Premchand Roychand offered him Rs. 200 a month from the 13th July as manager on his behalf of the said company, and that on the 18th June he accepted these terms; that he continued to manage the business of the company and of the said Premchand Roychand, and that on or about the 7th August 1885 the said Premchand Roychand being desirous of securing the benefit of his advice and experience on the board of directors of the company prevailed on him to join the board; that in order to qualify himself as a member of the board of directors, he purchased from the company five fully paid up shares of Rs. 1,000, and paid the company for the same. His affidavit continued as follows :—

"8. The way in which the company was paid for those shares is as follows :—

"9. There was due to me from the said Premchand Roychand a large sum of money in respect of the business done for him as aforesaid. I then requested the said Premchand Roychand to pay me a further sum of money in advance of my several salaries, in order to enable me to pay

the company Rs. 5,000 for the said five shares held by me. It was accordingly arranged between me, the said Premchand Roychand and the said company, that the company should give me five fully paid up shares, and that instead of my giving Rs. 5,000 thereof to the company I was to give the said amount to Premchand Roychand, and that Premchand Roychand, who was prior to this arrangement to receive from the company in consideration of certain patents and other materials sold to the company a certain number of fully paid up shares and certain sum of money in cash, was to receive five thousand rupees less by way of cash:—in short, instead of my paying Rs. 5,000 to the company and the company paying over the same to the said Premchand Roychand, I was to pay direct to Premchand Roychand.

[4] "10. Under the above arrangement, five fully paid up shares were issued to me by the company, and I am duly credited with the payment thereof, as will appear from the books of the company when produced.

"11. There was no agreement between me and the company to take more than the five aforesaid shares, and even if there had been any such agreement, the company were unable to carry out their part of the said arrangement, as all three hundred shares, into which the capital of the company was divided, had, prior to the 31st December 1885, been duly allotted to the holders thereof, as will appear from the balance-sheet of the company made up to 31st December 1885, and the papers of the company to which, for brevity's sake, I crave leave to refer when produced."

An affidavit of Premchand Roychand confirmed the above statements of Nusservanji Dadabhoj Katruck.

Latham (Advocate-General), for the Official Liquidator.—The company was in existence when Nusservanji signed a copy of the memorandum of association. His signing a copy amounted to a proposal to the company for shares. Then came his appointment as director. It is true there was no formal allotment of shares to him, but his acceptance of office completed his contract with the company. He has agreed to become a member within the provisions of s. 45 of the Indian Companies' Act VI of 1882. He cited *Brown's Case* (1); *Hewitt's Case* (2).

Jardine, for N. D. Katruck.—He referred to *Gujerat Spinning and Weaving Company v. Girdharlal Dalpatram* (3); *Anandji Visram v. The Nariad Spinning and Weaving Company, Ltd.*, (4); *In re Wheel Buller Consols* (5).

JUDGMENT.

SCOTT, J.—I have found this a case of considerable difficulty, as there is no decision exactly in point. The Bombay Electrical Company went into liquidation on the 22nd July, 1886, and the Official Liquidator notified on the 26th August, 1887, to the defendant [5] Nusservanji Dadabhoj Katruck, that he was placed on the list of contributories. The circumstances under which he was placed on the list were as follows:—He signed a duplicate of the memorandum of association for two shares on the 23rd March 1885, and for three shares on the 22nd June 1885. This was after the registration of the company, which took place on the 5th March 1885. There was no allotment of shares, nor does it appear that the defendant was placed on the register as holder of five unpaid shares. On

(1) L.R. 9 Ch. 102.

(2) 25 Ch. Div. 283.

(3) 5 B. 425.

(4) 1 B. 320.

(5) 38 Ch. Div. 42.

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the other hand, there was no withdrawal or cancellation on the part of the defendant. His signature remained unrecalled up to the date of liquidation, and he has never paid for these five shares. Meanwhile, on the 24th August 1885, he was named director of the company, and acted as director until the winding-up, attending and receiving fees at thirty-one out of thirty-four meetings. Three weeks after he was named director he was placed on the register for five fully paid up shares, which were the proper number of qualification shares for the office of director. The Official Liquidator in his second affidavit of the 28th April explains that transaction as follows:—"The said Nusservanji was in reality a director nominated and qualified by the said Premchand Roychand, and the five fully paid up shares standing in his name are part of a number of 100 shares issued to the said Premchand Roychand."

There are two questions in the case: (a) whether the five fully paid up shares obtained from Premchand sufficiently satisfied the articles of association as regards the qualification shares of him as director; (b) whether he is liable on the two lots of two and three shares respectively, inasmuch as he only signed a copy of the memorandum of association for them. On the first question the defendant maintains that he really paid the company for these shares, because the company owed Premchand money and Premchand deducted Rs. 5,000 from the company's debt on account of these shares, which sum Premchand owed defendant. This allegation was not borne out by the facts. It is totally disproved by the liquidator. But the decisions show that the qualification shares need not necessarily be taken from the [6] company. *Brown's Case* (1) decides that it is enough if they are obtained in open market or from a friend within a reasonable time of the acceptance of the office. It is also settled law that they need not be shares for which the qualifying director has paid. In this case the Official Liquidator admits that five fully paid-up shares were obtained within three weeks from the beginning of the directorship, and he also admits the defendant was duly qualified.

All the cases on the point are to be found in *Buckley on Companies*, pp. 48, 49, and 50, and it seems to me that, under these circumstances, the defendant director must be held to have duly qualified himself by the registration of the five fully paid up shares.

But it remains to consider his obligation as regards the three shares and two shares for which he subscribed a duplicate memorandum after the company had come into legal existence. It is an important fact in the case that the company did not attempt to treat them as qualification shares, as might have been done at the time the defendant was named director. It is admitted the qualification shares were otherwise provided for. The liability for these five unpaid shares is an independent question which entirely turns upon the effect of his signature of the duplicate. Does that constitute an agreement to take shares, or is it only an application for shares? There are two Bombay cases, *Anandji Visram v. The Nariad Spinning and Weaving Company Limited* (2), and *The Gujerat Spinning and Weaving Company v. Girdharlal Dalpatram* (3), which clearly lay it down that a signatory of a duplicate of the memorandum of association before registration is not bound as one who has signed the original. I do not think there is any difference in the case, because the company was registered before the signatures were given. Those signatures cannot be binding, because

(1) L.R. 9 Ch. Ap. 102.

(2) 1 B. 320.

(3) 5 B. 425.

they do not amount to a signing of the memorandum itself, and according to the Bombay cases do not, therefore, satisfy the requirements of the section. They do not create the positive agreement which the law has made [7] the necessary consequence of the signature of the real memorandum before registration. They only amount to a proposal. Has there been acceptance? There has been no allotment. There has been no placing on the register. It is unnecessary for me to cite cases in support of the proposition that an application for shares which is not followed by allotment and placing on the register does not bind the applicant. His liability was merely inchoate and never became complete. The Liquidator argued that the consent to become a director created an implied agreement to accept those five unpaid shares. But that is inconsistent with his own statement on affidavit of the real facts of the case, which are that the defendant qualified for his directorship by the five paid-up shares he obtained from Premchand. I do not think his application for five shares was ever accepted. There was no allotment. Acceptance cannot be legally inferred from the circumstances of the case. The company whilst it was solvent never accepted the defendant's offer to become a shareholder. It is too late now to do so. His name must be removed from the list of contributories, and his costs must be paid out of the assets.

Attorneys for the Official Liquidator :—Messrs. *Tobin and Roughton*.
Attorneys for N. D. Katruck :—Messrs. *Pestonji and Rustim*.

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Before Mr. Justice Scott.

RATTONBAI (*Plaintiff*) v. CHABILDAS LALLOOBHOY AND OTHERS
(*Defendants*). * [18th June, 1888.]

Practice—Minor—Next friend—Suit filed by a minor without a next friend—Application by defendant to strike plaintiff off the file—Civil Procedure Code (Act XIV of 1882), s. 442.

The plaintiff was a widow, and sued for the administration of her deceased husband's estate. The suit was filed on the 5th April 1888. On the 2nd May, the defendants' attorneys gave notice to the plaintiff's attorney that the plaintiff was a minor suing without a next friend, and that the plaintiff must be struck off the file in consequence. The plaintiff's attorney replied [8] that if the plaintiff was really a minor he would at once take steps to have her father appointed her next friend, and the plaintiff and proceedings amended. On 7th May inspection was given to the plaintiff's attorney of the plaintiff's horoscope, and after that inspection the plaintiff's attorney proposed that the proceedings should be amended by making the plaintiff's father her next friend. It appeared that the plaintiff was sixteen months under age. Nothing was done by either party for some weeks. On 6th June the defendants' attorneys gave notice that they would apply for an order that the plaintiff should be taken off the file under s. 442 of the Civil Procedure Code (Act XIV of 1882). On hearing the application the Court refused to make the order asked for. The suit did not appear to be a vexatious one, and the plaintiff's age did not appear to have been fraudulently concealed, her father having stated on oath that he believed her to be of age and expressing his willingness at once to be placed on the record as her next friend.

The Courts, as a rule, only strike the plaintiff off the file where it appears, on the face of the plaintiff, that it was filed by a person who was a minor, or when

* Suit No. 133 of 1888.