

13 B. 57.

ORIGINAL CIVIL.

Before Mr. Justice Scott.

1888

SEP. 1.

ORIGINAL  
CIVIL.

13 B. 57.

In re THE BOMBAY ELECTRICAL COMPANY (LIMITED).  
ELMORE'S CASE. [1st September, 1888.]

*Company—Liability of a signatory to the memorandum of association for a fully paid up share given to him as a present—Shares available for allotment, but not allotted.*

The Bombay Electrical Company having gone into liquidation, the official liquidator applied to have Elmore placed on the list of contributories in respect of [58] one share for which he had subscribed and signed the memorandum and articles of association on the 26th February, 1885. The company was registered on the 5th March, 1885, and went into liquidation in July, 1886. In his affidavit, Elmore stated that he had been induced to sign the memorandum and articles of association by one Premchand Roychand, who was a promoter of the company and who had promised to give him a fully paid-up share as the share he had signed for; that in March, 1886, Premchand had accordingly handed him the certificate of a fully paid-up share; that the said share was one out of a hundred fully paid-up shares which were given by the company to Premchand Roychand in part payment of money due to him from the company, and that the said share was duly entered in the share register of the company as having been fully paid up on the 18th September 1885. He contended that the company was estopped from denying that the share was fully paid up; that no other share had been allotted to him, and that all the shares of the company had been allotted.

*Held*, that he was liable in respect of the share. The transaction between him and Premchand Roychand did not bind or affect the company. The present of a paid-up share by a third party does not satisfy the obligation of a subscriber of the memorandum. The issue of the certificate does not estop the company so long as the certificate has not passed to a *bona fide* transferee for value. If Elmore had not, in fact, paid money or money's worth for the one share subscribed for, the company was still entitled to prove the non-payment and claim the value of the share.

*Held, also*, that as there were left shares available for allotment, the fact that none had been allotted to Elmore made no difference, and that the liquidator was entitled to hold him to the contract which he had made with the company when he signed the memorandum.

THIS was an application by the official liquidator of the Bombay Electrical Company to place J. C. S. Elmore on the list of contributories in respect of one share of the nominal value of Rs. 1,000.

Mr. Elmore subscribed for the said share and signed the registered memorandum and articles of association on the 26th February, 1885. The company was registered on the 5th March, 1885.

The application was resisted on the grounds set forth in Elmore's affidavit, the material part of which was as follows:—

"At or about the time of the formation of the above company one Premchand Roychand, who I believe was one of the promoters of the said company, requested me to take some shares in the said company, which, however, I at that time declined to do, as I did not wish to render myself liable to pay for the same.

"2. The said Premchand Roychand then informed me that he was about to receive some fully paid-up shares from the said company, and that if I would sign the memorandum and articles of association of the said company as a shareholder [59] to the extent of one share he, the said Premchand Roychand, would hand me one of those fully paid-up shares as the share for which I was to sign the said memorandum and articles of association.

1888

SEP 1.

ORIGINAL

CIVIL

13 B. 57.

"3. Upon this understanding I agreed to and did sign the memorandum and articles of association of the said company as a shareholder to the extent of one share, which, however, I would not have done had I known that I was to be made liable in any way to pay for the same.

"4. I am informed and verily believe that under the terms of an agreement dated the 18th day of January, 1886, entered into between the said Premchand Roychand and the said company the said Premchand Roychand was to receive a large number of fully paid-up shares of the said company.

"5. About a year after the registration of the said company *viz.*, on or about the month of March, 1886, the said Premchand Roychand handed to me at the office of the said company at Modv Bazar a share certificate of one share in the said company numbered 120, from which it will be seen that the said share is fully paid up.

"6. At a meeting of the board of directors of the said company, which was held on or about the 18th day of September 1885, a resolution was passed to make a part payment of Rs. 1,00,000 to the vendor *viz.*, the said Premchand Roychand; it was ordered that certificates for one hundred shares should be drawn out in the name of the said Premchand Roychand, which was accordingly done, and in pursuance of the said resolution a share certificate numbered 120, was, I am informed and verily believe, issued to the said Premchand Roychand, as will appear from the share certificate counterparts book to which I crave leave to refer when produced. I am further informed and verily believe that at a subsequent meeting of the said board of directors held on the 19th day of March, 1886, the said Premchand Roychand brought to the notice of the said board, that the certificate for the one hundred shares of the said company ordered to be delivered to the said Premchand Roychand had been drawn out in the name of him the said Premchand Roychand instead of in the names of himself and his friends, as specified in the receipt passed to the said company for the said one *lakh* of rupees, and the said Premchand Roychand requested the said directors to make the necessary rectification, and a resolution was passed that the necessary alterations in the share certificates be made as was requested by the said Premchand Roychand, which was accordingly done, and the share certificate No. 120, hereto annexed, was issued.

"7. I am also informed and verily believe that the said share No. 120 is entered in the share register of the said company as having been fully paid on the 18th day of September, 1885. I, therefore, submit that the official liquidator and the said company are estopped from denying that the share of which I am the holder is fully paid up. No share in the said company is allotted to me other than the said share No. 120, which, I submit, I hold as a nominee of the said Premchand Roychand, the said share having been given to him in part payment of the purchase money due to him from the said company, and further I believe that [60] all the shares of the said company have been allotted. I, therefore, submit that my name should be struck out of the list of contributories of the said company."

*Latham* (Advocate General), for the official liquidator.

*Russell*, for Elmore.

#### JUDGMENT.

SCOTT, J. —In this case Mr. Elmore subscribed the memorandum of association of the Electric Light Company for one share. The rule of law in such a case is that "a man who signs the memorandum of

association agrees to become a shareholder, and so long as there are shares that can be allotted to him he must fulfil that obligation"—*per* Jessel, M.R.; *Drummond's Case* (1).

But Mr. Russell argued (a) that the special circumstances took this case out of the general rule, and (b) that the company had no shares available for allotment. As regards the first point, I do not think the transactions between Mr. Elmore and Mr. Premchand Roychand in any way bind or affect the Company. The present of a paid-up share by a third party does not satisfy the obligation of a subscriber of the memorandum. The issue of the certificate does not estop the company as long as the certificate has not passed to a *bona fide* transferee for value. If Mr. Elmore has not, in fact, paid money or money's worth for the one share subscribed for, the company is still able to prove the non-payment, and claim the Rs. 1,000.

As regards the second point, I think the case is governed by *Evan's Case* (2). There though all the shares were, in the first instance, allotted to other persons, the allotment was not confirmed, and it was consequently held that there were, in fact, shares which might have been allotted to Mr. Evans. So here there were shares proposed to be allotted to Premchand if certain things were done which were not done. Thus the allotment was never final, and there were left at all times shares sufficient to supply the claim of Mr. Elmore. It makes no difference that no share was allotted to him. The liquidator on behalf of creditors is entitled, in law, to hold him now to his contract which he made with the company when he signed the memorandum. [61] He must be placed on the list for one share, and he must pay the costs for this application.

Attorneys for the Official Liquidator:—Messrs. *Tobin and Boughton*.

Attorneys for J.C.S. Elmore:—Messrs. *Winter, Burder and Bayley*.

13 B. 61—13 Ind. Jur. 185.

ORIGINAL CIVIL.

Before Mr. Justice Scott.

TOOLSEYDAS LUDHA (*Plaintiff*) v. PREMJI TRICUMDAS (*Defendant*).\*  
[6th September, 1888.]

*Hindu law—Joint family—Evidence—A person claiming a share must prove property to be joint—No presumption that property of member of joint family is joint property—Release obtained from person just come of age—Guardian and minor—Will—Disherison of heir—Undisposed of residue.*

The plaintiff as a joint member of the defendant's family sued to set aside a release obtained from him by the defendant and for partition, &c. The plaintiff was the son of one Ludha Callianji and the defendant was the plaintiff's nephew and grandson of Ludha Callianji, being the son of Tricumdas Ludha, an elder brother of the plaintiff. The plaintiff alleged that Ludha and his brother Jivan were joint and had carried on a family business; that Jivan died childless and that on Ludha Callianji's death in 1868 the whole family property passed into the hands of Tricumdas Ludha his eldest son, on whose death it came into the possession of the defendant as eldest male member of the family although belonging to a younger generation than the plaintiff. The plaintiff alleged that in 1882, shortly after he came of age, the defendant induced him to sign a

\* Suit No. 421 of 1883.

(1) 7 Ch. App. 780.

(2) L. R. 2 Ch. 427.