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Before Mr. Justice Parsons.

THE BOMBAY NATIONAL MANUFACTURING COMPANY, LIMITED (*Plaintiffs*) *v.* AHMED BIN ESSA KHALIFFA (*Defendant.*)* [18th March, 1890.]

Company—Companies Act VI of 1882—Signing duplicate of memorandum before registration of company—Signature after registration of company, effect of—Proposal to take shares—Acceptance.

When a person signs a duplicate of the memorandum of association *after* the registration of the original memorandum he does not thereby become a subscriber within the meaning of s. 45 of the Indian Companies Act VI of 1882. Such signature, however, is equivalent to a proposal to the company to take shares, and if such a proposal is accepted, the person signing is a person who has agreed with the company to become a member, within the terms of s. 45, and is liable to calls if entered on the register.

SUIT to recover Rs. 15,000 alleged to be due in respect of four calls upon fifteen shares standing in the defendant's name.

The defendant denied that "he ever was a member of the plaintiffs' company, or a properly registered holder of the said shares."

The plaintiffs' company was registered in Bombay, under the Indian Companies Act (VI of 1882), on the 1st October, 1887. The plaintiffs alleged that the defendant, some time before that date, had signed a duplicate of the memorandum of association, that subsequently he had been duly placed on the register, and in 1888 had been served with notices of the various calls for which this suit was now brought.

At the hearing the defendant admitted that he had signed a duplicate of the memorandum of association, but swore that he had done so before the 1st October, 1887; and that he had never afterwards had any communication from or with the company until he received the notices of call. To these notices he had never replied.

One of the directors was called as a witness, and he stated that it was by his direction that the defendant's name was placed on the register of the company.

[197] The issue raised on behalf of the defendant was whether the defendant ever became a member of the company.

Lang, for the defendant:—The defendant is not a member of the company, and is not liable for calls. The fact that he signed a duplicate of the memorandum of association does not make him a member—*The Guzerat Spinning and Weaving Company* v. *Girdharlal Dalpatram* (1). That case decides that such a signature is not a subscription which results in membership, under s. 45 of the Indian Companies Act VI of 1882.

Nor does the defendant's signature in this case imply an agreement with the company to become a member, under the second clause of s. 45. We say the defendant signed it *before* the company was registered. If that is so, then the company cannot claim upon it, for the company was not then in existence. It is not a proposal or an agreement to take shares of which the company can take advantage. Such an agreement must be

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with the company itself—*The Guzerat Spinning and Weaving Company* v. *Girdharlal Dalpatram* (1); *The Imperial Ice Manufacturing Company Limited.* v. *Muncherji Burjorji Wadia* (2).

But, even if the defendant signed the duplicate *after* the original memorandum of association had been registerd, we say he is not liable. His signature, then, might be equivalent to a proposal to take shares. But it is not sufficient to prove such a proposal. The plaintiffs must prove an acceptance by the company of that proposal and a communication of such acceptance to the defendant. They have proved neither—Buckley on Companies (5th ed.) p. 54 ; Russell on Companies, (2nd ed.), p. 45 ; Lindley on Companies, (5th ed.), p. 14; art. 10 of the Articles of Association (3). No notice of allotment has ever been given to the defendant, nor does it appear that any allotment [198] was, in fact, ever made. The mere placing of the defendant's name on the register, does not amount to an allotment—*In re The Bombay Electrical Company, Limited* ; *Nusservanji Dadabhoy Katruck's case* (4) ; Lindley on Companies (5th ed.), p. 60. The evidence is, moreover, that the defendant was placed on the register by the direction of one director, but by art. 103 of the Articles of Association (5) a quorum consists of three directors. There is no resolution put in evidence authorising a single director to do anything, and the act of this director was invalid : Lindly on Companies, (5h ed.) p. 155 *et seq* ; *The Imperial Flour Mills Company, Limited* v. *W. T. Lamb* (6). Moreover, the register itself is irregular and is not kept in accordance with the provisions of s. 47 of Act VI of 1882. Opposite the defendant's name on the register are written the words "by subscription," which show clearly that the plaintiffs thought that the defendant was a member by virtue of his having subscribed the duplicate memorandum of association, and not by an agreement such as is referred to in the second clause of s. 45.

Macpherson, for plaintiff :—The first point for decision is whether signing a duplicate of the memorandum of association has the same effect as signing the original. That point has never actually been decided by these Courts, although I admit the inclination of opinion expressed in several cases is against me. But the question is still open. The only English authority is in our favour—*New Brunswick and Canada Co.* v. *Boore* (7) cited at p. 47 of Buckley on Companies (5th ed). In *The Imperial Ice Manufacturing Company's Case* (2) it was assumed that the point had been decided in the case of *The Guzerat Spinning and Weaving Company* v. *Girdharlal Dalpatram* (1), but it was not; for there (see p. 434) the document signed by the defendant was not a copy of the registered memorandum, but materially different from it.

[199] The next point is, whether subscription to this document, coupled with the entry of his name in the company's register and with the notices of call duly served on him, and not objected to, are sufficient

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(3) Article 20.—An application for shares in the Company, signed by or on behalf of the applicant, and followed by an allotment of any shares therein, shall be deemed to be an acceptance of such shares within the meaning of these articles, entitling the Company to place the name of the allottee on the register in respect thereof, and every person who thus, or otherwise, accepts any shares and whose name is on the register shall be deemed a member.

(4) 13 B. 1.

(5) Article 104.—Three directors shall form a quorum, and two directors may at any time summon a meeting of the directors.

(6) 12 B. 647. (7) 3 H. & N. 249.

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to prove an agreement by the defendant to become a member of the company. In this view of the case the material point is, whether the defendant signed before or after the registration of the company. The defendant says he signed *before* registration. If the Court accepts his statement, then, on the authority of the cases cited by the other side, the plaintiffs' case must fail.

But we contend that the evidence shows that the defendant signed the duplicate memorandum *after* registration of the original memorandum. If that is so, then we submit that his signing the document was a proposal to take shares. Placing his name on the register was the acceptance by the company of that proposal, which of itself implied previous allotment, and the notices of call served upon him were the communication to him of that acceptance. There had not previously been any revocation of his proposal, nor was there then any objection or withdrawal or repudiation by him: see Buckley on Companies, (5th ed.), p. 56, *et seq.*

JUDGMENT.

PARSONS, J.—So far as the evidence goes, I must find that the defendant did not sign the original memorandum of association, but signed a duplicate thereof *after* the registration of the company. He was not, therefore, a subscriber of the memorandum of association within the meaning of s. 45 of the Indian Companies Act. By his act, however, he did propose to take shares and so to become a member, and if his proposal has been accepted by the company he is a person who has agreed with a company, to become a member within the terms of the section.

On the evidence I must hold that there has been an acceptance. There is no doubt that shares Nos. 10 to 24 were allotted to him, and he was entered in the register as a shareholder. It is true that this allotment and this entry on the register were not communicated to him at once; they came, however, to his knowledge very soon afterwards, within, I should say, a reasonable time, and certainly before any revocation of the proposal had [200] been made by the defendant. The defendant appears to have agreed to take shares in December, 1887. On the 11th January he was informed that his proposal had been accepted, and was noticed of the call that had been made. Still he did not revoke his proposal or deny his liability. Whether, then, it was open to him to revoke his proposal, (as to which see s. 5 of the Contract Act), I need not decide. Sufficient to say that he did not. Nor indeed up to time of suit has he ever revoked his proposal. The point that the entry on the register was improperly made on the authority of a single director, does not seem to be material. The company has accepted his proposal, and now seek to hold him liable. It seems to me that defendant clearly is a person who has agreed with a company to become a member and whose name is entered on the register, and who, therefore, under s. 45 must be deemed to be a member of the plaintiffs' company. It is not contended that the calls sought to be recovered were not regularly and legally made.

I find issue 1 in the affirmative, issue 3 in the negative, and on issue 2 decree for the amount claimed in para. 9 of the prayer in the plaint and costs and 6 *per cent.* on judgment.

Attorney for the plaintiffs:—Mr. *Shamrav Pandurang.*

Attorneys for the defendant:—Messrs. *Payne, Gilbert and Sayani.*