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[469] APPELLATE CIVIL.

Before Mr. Justice Bayley, Chief Justice (Acting), and Mr. Justice Candy.

MALICHAND DHARAMCHAND (Original Defendant), Appellant v.
DALSUKHRAM HARGOVINDAS, LIQUIDATOR OF THE GUJERAT
OIL MILL COMPANY, LIMITED (Original Plaintiff),
Respondent.* [11th July, 1892.]

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Company—Suit by liquidator—Limitation—Allotment of shares—Commencement of shareholder's liability—Indian Companies Act (VI of 1882), s. 125.

The liquidator of the Gujerat Company in September, 1889, sued the defendant as a registered shareholder of the company to recover a sum of Rs. 2,483 due from him in respect of his shares. The plaintiff set forth the particulars of demand, one of which was Rs. 250, being the amount of deposit payable before allotment on 15th July, 1886, and another a sum of Rs. 250 payable on allotment on 15th July, 1886. This suit was brought on 10th September, 1889, and the defendant contended that the above two items of claim were barred by limitation. The lower Courts, notwithstanding the statement in the plaint, found, as a fact, that the allotment of the shares was really made in November, 1886.

Held, therefore, assuming three years to be the period of limitation, that the claim was not barred. The debt due from the defendant did not become recoverable until he was registered as a shareholder.

SECOND appeal from the decision of Gilmour McCorkell, District Judge of Ahmedabad.

The plaintiff, as liquidator of the Gujerat Oil Mill Company, Limited, sued to recover Rs. 2,483-12-0 (i.e. Rs. 2,000 principal and Rs. 483-12-0 interest), from the defendant due as a registered shareholder of the company in respect of ten shares allotted to him.

The particulars of the claim as given in the plaint were as follows:—

	Rs.	A.	p.
Deposit payable before allotment	250 0 0
Payable on allotment, 15th July, 1886	250 0 0
First call, 15th November, 1886	500 0 0
Second call, 20th January, 1887	500 0 0
Third call, 18th April, 1887	500 0 0
Total	2,000 0 0
Interest	483 12 0
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[470] The defendant (*inter alia*) as to the first two items pleaded limitation. The suit was filed on the 10th September, 1889.

The Subordinate Judge, relying on the decision in *The Parelt Spinning and Weaving Company, Limited, in Liquidation v. Manek Haji* (1), found that the claim was not time-barred, and that the plaintiff was entitled to recover interest at 9 per cent. from the 4th July, 1889. He found that defendant's name was not placed in the register until November, 1886. He decreed the plaintiff's claim to the extent of Rs. 2,033, and rejected the rest. In his judgment he remarked as follows:—

“The list of allottees does not appear to have been prepared in pursuance of the terms of the resolution of the 10th June, 1886, but only

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after the last application for allotment was received from Shivalal Mayachand on the 13th November, 1886. The reason why no allotment was made to the defendant before the 1st of that month is obvious enough. The resolution in question only authorizes allotment of shares to those who had made applications for the same. . . . The letters of allotment appear to have been issued about the 25th June, 1886, and, as the defendant's name was not placed on the register until after the 1st November following, none could have been sent to him before the latter date."

On appeal by the defendant the District Judge confirmed the decree. The defendant then appealed to the High Court.

Starling (with *Govardhanram M. Tripathi*), for the appellant (defendant).—The lower Courts held, on the authority of *The Parell Spinning and Weaving Company, Limited, in Liquidation v. Manek Haji* (1), that the present claim is governed by six years' limitation. We contend that the limitation applicable is three years, and, therefore, the claim with respect to the first two items is time-barred. The Bombay decision relied on by the lower Courts is based upon *In re Whitehouse & Co.* (2), but in that case there was merely a summons, and the liquidator had appeared in Chambers. The ordinary rule of law is that a suit is barred after three years, but a summons may be taken at any time. Again, the point involved in *In re Whitehouse & Co.* (2) was specially provided [471] for in the Company's Act (of 1862) itself. The other cases referred to in the Bombay decision are *In re National Funds Assurance Company* (3) and *Whitehouse v. Jamieson* (4). In the former also a summons was taken out by the liquidator. The above cases are in our favour, and they show that a liquidator merely represents the company, and when he sues as such he can recover only what the company could have recovered.

Russell (with *F. Chalk*), for the respondent (plaintiff):—A liquidator is not merely a representative of the company; he is also a representative of the company's creditors. The appellant subscribed the memorandum of association. He is therefore, a shareholder, and as such subject to all liabilities—ss. 61 and 124 of the Indian Companies Act (VI of 1882); *Buckley on Companies* (6th ed.), p. 325; *Starling on Limitation*, p. 291; *In re Kathiawar Trading Company* (5).

The position of a liquidator in voluntary winding up is set forth in s. 177 of the Indian Companies Act. If it is once established that the liquidator is a trustee for the creditors of the company, then the limitation would be six years. We strongly rely upon *The Parell Spinning and Weaving Company, Limited, in Liquidation v. Manek Haji* (1).

He also cited *Brighton Arcade Co. v. Dowling* (6); *In re Hull and County Bank; Burgess's case* (7).

JUDGMENT.

CANDY, J.—The only point taken in second appeal is that of limitation with respect to the demand for deposit and the sum payable on allotment of the shares.

In the plaint it is stated that these sums were payable—The deposit before 15th July, 1886, and the second sum payable on allotment on 15th July, 1886. Apparently the meaning of this date is that in June, 1886, the directors decided that shares should be allotted, and that the sums due on

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(2) 9 Ch. Div. 595.

(3) 10 Ch. Div. 118.

(4) H.L. Sc. 29.

(5) See *Times of India*, dated 2nd May, 1887.

(6) L.R. 3 C.P. 175.

(7) 15 Ch. Div. 507.

allotment should be payable, on 15th July, 1886. But it is found as a fact, by which finding this Court is bound, that the allotment of the shares in [472] question was really made in November, 1886. This suit was filed in September, 1889, and so, assuming three years to be the period of limitation, the suit would not be barred. For by art. 9 of the articles of association the money became due on the inscription of the defendant's name as the holder of such shares. His liability may have commenced, and the debt may have accrued, when he signed the registered memorandum of association, but the debt could not become recoverable before notice was sent to him for enforcing such liability, or at least before the inscription of his name (*cf.* s. 125, Act VI of 1882). Under these circumstances we confirm the decree of the District Judge with costs.

Decree confirmed.

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APPELLATE CIVIL.

Before Mr. Justice Bayley, Chief Justice (Acting), and Mr. Justice Candy.

CHHOTALAL CHHAGANLAL (*Original Defendant*), Appellant v.
DALSUKHRAM HARGOVINDAS, LIQUIDATOR OF THE GUJERAT OIL
MILL COMPANY, LIMITED (*Original Plaintiff*), Respondent.*
[11th July, 1892.]

Company—Suit by liquidator against shareholder—Limitation—Commencement of liability of shareholder in respect of shares—Memorandum of association—Subscriber to memorandum—Attestation of signature of subscriber—Want of attestation—Irregular attestation—Indian Companies Act, VI of 1882, s. 11.

A suit against a shareholder to enforce liability in respect of his shares, if brought within three years from the date at which his name is inscribed in the register as the holder of such shares, is not barred by limitation.

Where a memorandum of association of a company has been registered, a subscriber cannot divest himself of his liability as a member of the company, although his signature to the memorandum may not have been properly attested. The transaction may be irregular, but it is not void.

THIS was a second appeal from the decision of Gilmour McCorkell, District Judge of Ahmedabad.

The plaintiff as liquidator of the Gujerat Oil Mill Company, Limited, sought to recover Rs. 400 and interest Rs. 97-12-0, in all Rs. 497-12-0, from the defendant, being the amount due by him in respect of two shares held by him in the company.

[473] The defendant Sha Chhotalal Chhaganlal pleaded (*inter alia*) that the suit was time-barred. He also contended that he was not a shareholder, on the ground that his subscription to the registered memorandum of association was not duly attested. The fact was that the witness, who was said to have attested the defendant's signature, had attested other signatures written above that of the defendant, and had written his name in the parallel column. Instead of again writing his name in that column opposite the name of the defendant, the witness had merely made two marks (,) commonly used to signify "ditto."

The Subordinate Judge allowed the plaintiff's claim to the extent of Rs. 400 only, and disallowed it with respect to interest.

* Second Appeal No. 732 of 1891.

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