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case was that the Chilian partners had never been within the jurisdiction, and consequently could not have personally committed an act of [671] bankruptcy by a particular act of their agents (the English partners) which they had not authorized, and of which they had not cognizance, and that, as such was the case, the Court would not assume that the Legislature intended that an act of partners in England not authorized by the Chilian partners should operate upon the latter, who were not actually subject to the jurisdiction in a case where the operation would result in a compulsory personal attendance in England. If this be the true view of that case, it in no way militates against the conclusion to which I have come.

It has never been doubted that under certain circumstances a suit could be brought in England against a foreigner, and the questions which have arisen have always been as to what was good service of the writ; generally whether it could be served as a matter of course, or whether leave of a Judge must be obtained, or whether notice only of the action should be given. This remark applies to all the cases cited on the recent rules under the Judicature Acts as to suits against firms. Partners can now be sued in the name of their firm, and the questions that have arisen have been as to how service of the writ in the action was to be effected. The Judges have seemed to be of opinion that service as a matter of course in certain instances would be an infringement of international law, but yet it would appear that they admitted the possibility of the writ being served by leave of a Judge. Consequently these cases, in my opinion, only apply to the construction of certain new and rather complicated rules of practice which really do not give us any practical assistance in the present case. Besides which, the question is, not whether a writ can be served, but whether an action can be brought. When one looks at the changes there have been in the rules themselves, and the divergent decisions of various Courts on the rules, it can hardly be said that the practice in England has at present been put upon a satisfactory basis so as to afford unerring guidance to us in such a case as the present.

Attorneys for the plaintiff:—Messrs. *Bhaishankar and Kanga.*

Attorneys for the defendant:—Messrs. *Little, Smith, Nicholson and Bowen.*

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17 B. 672.

[672] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

In re GULABDAS BHAIDAS.* [15th September, 1892.]

Company—Indian Companies Act (VI of 1882), s. 28—Shares issued as fully paid up—Rights of a purchaser with notice taking from a purchaser without notice—Notice—Contributory.

Twenty shares of the Bella Spinning, Weaving and Manufacturing Company, Limited, were originally allotted to A as fully paid up shares partly for work done, and partly for work to be done for the company. The agreement under which the shares were so allotted was not registered as required by s. 28 (1) of Act VI of 1882.

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* Appeal No. 108 of 1892.

(1) Section 28 of Act VI of 1882 provides as follows:—

"Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares."

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A sold three of these shares to D, who had no notice that they were not fully paid up. D sold the three shares to G, who was the managing director of the company. The company was wound up by the Court. At the date of the winding up, G was holder of the three shares. In settling the list of contributories, the Court ordered G's name to be placed on the list in respect of the three shares.

Held, that G was not liable as a contributory. Though G was a managing director of the company, and as such must have known that the shares had been issued as fully paid up shares without complying with s. 28 of Act VI of 1882, he was not on that account estopped from taking advantage of the equitable rule which protects a purchaser with notice taking from a purchaser without notice.

APPEAL against the order of J. B. Alcock, District Judge of Surat, made in winding up proceedings under the Indian Companies Act VI of 1882.

The Bella Spinning, Weaving and Manufacturing Company, Limited, was ordered to be wound up by the Court in 1881.

Twenty shares of this company were originally issued as fully paid up shares to one Dorabji, a contractor, partly for work done, and partly for work to be done for the company. The agreement under which the shares were so issued was not registered according to s. 28 of Act VI of 1882.

[673] Dorabji sold three of these shares to one Dadyshet, who had no notice that the shares were not fully paid up.

Dadyshet sold the three shares to Gulabdas, who was the managing director of the company. At the date of the winding up, Gulabdas' name appeared on the register of the company as the holder of the three shares.

In settling the list of contributories, the District Court was of opinion that as Gulabdas was a managing director of the company he must be taken to have notice that the shares were not fully paid up, and that the fact of the intermediate holder not having notice, did not help him. The Court, therefore, held that Gulabdas was liable, as a contributory, to pay the full amount of the three shares. Gulabdas' name was accordingly placed on the list of contributories.

Against this order Gulabdas appealed to the High Court.

Kalabhai Lallubhai, for appellant:—The appellant bought the shares from a person who had no notice of their not being fully paid up shares. The fact that the appellant had notice is immaterial. The ruling in *In re Stapleford Colliery Company* (1) is conclusive on the present question.

Ganpat Sadashiv Rao, for respondents (official liquidators):—The appellant was a managing director of the mill. As such he must have known that the shares which he purchased were not, either in fact or in law, fully paid up. He cannot, therefore, avail himself of the equitable rule which protects a purchaser with notice taking from a purchaser without notice. That doctrine does not apply in the present case. The words of s. 28 of Act VI of 1882 are clear. According to that section every shareholder is bound to pay, in cash, the full amount of the shares he holds, unless there is a registered agreement to the contrary. There is none such here. The appellant was, therefore, rightly put on the list of contributories.

JUDGMENT.

SARGENT, C. J.—Twenty shares were originally issued to the contractor Dorabji as fully paid shares and registered in his name, of which three were sold and transferred to Mr. Dadysett, [674] who, it is admitted, had no notice that the shares were not fully paid up. The

(1) 14 Ch. D. 432.

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decision in *In re Stapleford Colliery Company* shows that as between the company and Mr. Dadyshet the three shares must be treated as paid up, and that he could make a good title to a purchase whether with or without notice. It appears that they were sold to the appellant Gulabdas, who was the managing director of the company, and it has been urged that, as such, he must have known that the shares had been issued as fully paid up shares without complying with s. 28 of Act VI of 1882, and cannot, therefore, take advantage of the rule which protects a purchaser with notice taking from a purchaser without notice. This argument, however, was addressed to the Court in *In re Stapleford Colliery Company*(1), where the appellant and his father, whose executor he was, had been the solicitor and chairman of the company at the time of the agreement with the contractor; and yet the appeal Court held that the fact of their being such officers made no difference in their title.

We are unable to distinguish the present case from the one referred to, and must, therefore, discharge the order of the Court below placing the name of Mr. Gulabdas on the list of contributories. Appellant to have his costs throughout.

Order reversed.

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17 B. 674.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

VENKATESH KHANDO AND ANOTHER (*Plaintiffs*) *v.* CHANAPGAVDA (*Defendant*).* [15th September, 1892.]

Award—Civil Procedure Code (XIV of 1882), s. 525—Application for filing the award registered as a suit—Objections taken by the defendant—Court precluded from filing award.

An application for filing an award being registered as a suit, the defendant raised objections, and the following issues were raised :—

(1) Whether a certain arbitrator was nominated or accepted as one of the arbitrators by the defendant ?

[675] (2) Whether there was any and what illegality apparent on the face of the award ?

(3) Whether the proceedings conducted by the arbitrators were illegal ?

Held that the objections taken by the defendant, which were the subject of the above issues, precluded the Court from filing the award.

[R., 17 A. 21 (24) = 14 A.W.N. 187 ; 20 B. 596 (600) ; 28 B. 287 = 6 Bom. L.R. 15 (16) ; 13 C.P.L.R. 53 (56).]

THIS was a reference made by Rao Bahadur Vithal Vaikunth Vagle, First Class Subordinate Judge of Dharwar, under s. 617 of the Civil Procedure Code (XIV of 1882).

The reference was as follows :—

"This was an application registered as a suit under s. 525 of the Civil Procedure Code (XIV of 1882) for filing an award made by arbitrators appointed by the parties without the intervention of the Court.

"The defendant objected to the award being filed, on the following grounds :—

"(1) The application was time-barred.

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* Civil Reference, No. 12 of 1892.

(1) 14 Ch. D. 432.