

1908
 GREAT CITY
 MUNICIPALITY
 v.
 TYABJI.

under Rule 4 (f) (5) to cut off the water-supply. It is not contended by Mr. Shah that the tenants in the plaintiff's house are not *bonâ fide* occupiers.

We, therefore, are of opinion that the plaintiff is entitled to relife. We think that the relief should take the form of a declaration and a modified injunction. We pass the following decree:—

This Courts doth declare that the defendants are not entitled to cut off the water-supply to the plaintiff's house and doth restrain the defendants from cutting off such supply. And this Court doth decree that the defendants do pay the costs of the plaintiff throughout and this decree shall be without prejudice to the future exercise by the defendants of any powers vested in them at any time by statue or rules thereunder or by contract.

Decree modified.

G. B. R.

PRIVY COUNCIL.

P. C.
 1905
 May 13.
 June 2.

BANK OF BOMBAY (DEFENDANT) v. SULEMAN SOMJI (PLAINTIFF).

[On appeal from the High Court of Bombay.]

Presidency Banks Act (XI of 1876), section 50—Bank of Bombay—Right of a shareholder to inspect register of Shareholders of the Bank—Object of such inspection—Common law right of member of Corporation to inspect books of the Corporation—Companies' Acts (X of 1866), section 231, (VI of 1882) section 256.

The respondent as a shareholder in the appellant Bank claimed a right to inspect, copy, and make extracts from the register of shareholders which the Bank refused to allow, but offered to furnish him with the list he asked for if he could satisfy them that he required it for use in his own interest as a shareholder. Without accepting this offer the respondent brought a suit against the Bank in which he based his claim on irregularities which he alleged existed in the management of the Bank, in the election of Directors and in other matters, and stated that he claimed inspection of the register to enable him to communicate with the other shareholders

* *Present*: LORD MACNAGHTEN, LORD JAMES OF HEREFORD, LORD ATKINSON, SIR ANDREW SCOBLE, and SIR ARTHUR WILSON.

and obtain their assent to resolutions for improvement in the Bank's management to be proposed at a future meeting. The first Court dismissed the suit, but the High Court on its Appellate Side reversed that decision and passed a decree giving the respondent without any restriction the right to inspect, copy and extract from the register which he had originally demanded from the Bank.

1908

BANK OF
BOMBAY
v.
SULEMAN
SOMJI.

Held, by the Judicial Committee that the suit should be treated according to the principles regulating an application for a writ of mandamus, and in that view the respondent was not entitled to succeed unless he showed clearly that he had the specific right to enforce which he asked for the interference of the Court, that he had claimed the exercise of that right and none other, and that his claim had been refused.

In this case there was no statute giving him an unrestricted right, the appellant Bank (which was incorporated under Act XI of 1876) being by section 231 of the Companies Act, 1866, and section 256 of the Companies' Act, 1882, expressly exempted from the operation of those statutes.

The result of the authorities as to the nature and extent of the common law right which every member of a corporation has to inspect the documents of the corporation was that "the privilege of inspection was confined to cases where the member of the corporation has in view some definite right or object of his own, and to those documents which would tend to illustrate such right or object."

Taylor on Evidence, 10th Edition (1906), Volume II, paragraph 1495, referred to.

On the evidence the respondent had not brought himself within the principles so laid down and his claim should therefore not be allowed.

Rea v. Merchant Tailors' Company⁽¹⁾ followed.

He was not entitled to the extended right given him by the decree of the appellate Court, and the limited and qualified right contended for in the suit was never put forward or insisted on before action brought nor was any claim based on it ever refused.

APPEAL from a decree (22nd January 1907) of the High Court at Bombay in its Appellate Jurisdiction which reversed a decree (6th August 1906) of the same Court in its ordinary Original Civil Jurisdiction and decreeing the respondent's suit with costs.

The judgment of the original Court (Scott, J.) which was eventually upheld by the Privy Council states the facts sufficiently for the purposes of this report, and was as follows:—

(1) (1831) 2 B. & Ad. 115.

1908

BANK OF
BOMBAY
v.
SULEMAN
SOMJI.

“The plaintiff sues the Bank of Bombay for a declaration that he is entitled at all reasonable times to inspect the register of shareholders of the Bank and copy and take extracts from the said register and for an order that the Bank do give him such inspection and allow such copies and extracts.

“The Bank is a corporation to which the Indian Companies Act does not apply. It possesses by virtue of the Presidency Banks Act, 1876, the right powers and immunities incident by law to a corporation aggregate. The plaintiff is the owner of one share in the Bank and is therefore a member of the corporation. The suit has been instituted as the result of correspondence between the plaintiff and the Secretary of Bank which took place in June and July of this year.

“The first letter dated the 4th of June refers to a verbal refusal by the Secretary on the 1st of June to allow the plaintiff to take a list of the shareholders with their addresses and closes with a request that such list may be furnished to him on payment for the same.

“On the 7th June the Secretary wrote on the instructions of the Directors that there was no provision in the Presidency Banks Act as to the right of a shareholder to claim such a list but in order to enable the Directors to decide definitely on the requisition the plaintiff was asked to state for what purpose and under what authority the list was required and claimed.

“To this the plaintiff replied on 16th by threatening legal action to compel the Bank to furnish the list or to give him inspection, and he added that he was informed that the Bank had furnished such lists in other cases.

“On the 2nd the Secretary replied that such a list was supplied to a shareholder a few years ago on his satisfying the Board that the purpose for which he required it was a legitimate one and in his *bona fide* interest as a shareholder. The Secretary added ‘the Directors will be pleased to comply with your request if you will be good enough to similarly satisfy them that you require the list for use in your interests as a shareholder.’

“On the 5th July the plaintiff replied, ‘It is unfair to me to be asked why I require the inspection. There have been gross

irregularities in the management of the Bank, in the election of the Directors, in the manner the Directors act, and other matters, and you preclude me from communicating with the shareholders or taking concerted act on by withholding the inspection. Please take notice that I have instructed solicitors to prepare papers to file a suit which will be done within 3 days from this date unless the inspection is given to me before then.'

"Inspection was not given, no further communication passed between the plaintiff and the Bank, and the suit was instituted on the 11th of July.

"The law as to the right to inspect and copy corporate or public documents is thus stated by Lindley, L. J., in *Mutter v. Eastern and Midlands Railway Company*⁽¹⁾. 'Where the right to inspect and take a copy is expressly conferred by statute the limit of the right depends on the true construction of the statute. When the right to inspect and take a copy is not expressly conferred the extent of such right depends on the interest which the applicant has in what he wants to copy, and on what is reasonably necessary for the protection of such interest. The common law right to inspect and take copies of public documents is limited by this principle, as is shown by the judgment in *Rex v. Justices of Staffordshire*⁽²⁾; so is the common law right of the member of a corporation to inspect and take copies of the documents of the corporation; *Rex v. Merchant Tailors' Company*⁽³⁾.

"In the present case there is no right of inspection by statute, and the plaintiff's claim depends upon his common law right as a member of the corporation to inspect and take copies of its documents. In the case of *Rex v. Merchant Tailors' Company*⁽³⁾ referred to by Lindley, L. J., it was held that the Court will not grant an application by members of a corporate body for a mandamus to inspect the documents of the corporation unless it is shown that such inspection is necessary with reference to some specific dispute or question depending in which the parties

(1) (1884) 38 Ch. D. 92 (106).

(2) (1837) 6 Ad. & E. 84.

(3) (1831) 2 B. & Ad. 115.

1903

BANK OF
BOMBAY
".
SULEMAN
SOMJI.

1908
 BANK OF
 BOMBAY
 v.
 SULEMAN
 SOMJI.

applying are interested and the inspection will then only be granted to such extent as may be necessary for the particular occasion.

“What then was the plaintiffs interest for the protection of which inspection of the share register was reasonably necessary when he instituted this suit ?

“The letters to which I have referred were the only materials which the Directors of the Bank had before them to enable them to judge of the plaintiff's right and on those materials in my opinion they rightly held that the plaintiff had disclosed nothing sufficiently definite to entitle him to claim inspection. There was therefore no improper refusal to grant inspection.

“I therefore find on the 1st issue that the plaintiff had at the date of the filing of this suit no cause of action against the Bank. This is enough to dispose of the suit but Counsel for the Bank has stated that the Directors do not wish to raise any fractions opposition but desire to know what their position is in such cases. I cannot give any judgment which will extend beyond this particular case but the second issue enables me to investigate more minutely the basis of the plaintiff's claim.

“The issue is ‘whether the plaintiff required inspection for the protection of his own interests or for any other reasonable purpose ?’

“The plaintiff's Counsel did not lead any evidence on the point but tendered the plaintiff for cross-examination. In cross-examination it appeared that the plaintiff is at present actively litigating as respondent in an appeal to the Privy Council in which the Bank is a formal party. The appeal referred to is in the suit of Suleman Somji (the present plaintiff) against Rahimtulla and others the facts and arguments in which are stated at length in the judgment of Chandavarkar, J., 6 Bom. L. R. 800. From that report it appears that the plaintiff and his full brothers claimed as legatees under their father's will priority to an equitable mortgage effected in favour of the Bank of Bombay by their half brothers, the executors of their father's will. It appears from the report at page 809 that the plaintiffs alleged that the Bank had actual notice of their claim as legatees with

a charge through Ahmedbhoy Habibbhoy, one of the Bank's Directors. They also alleged (see page 819) that the Bank having no confidence in their title had transferred their interest to the defendant Dwarkadas Dharamsey who was the nominee of Ahmedbhoy Habibbhoy. Dwarkadas Dharamsey is the appellant in the Privy Council.

1908
BANK OF
BOMBAY
v.
SULEMAN
SOMJI.

“On the 18th of April 1906 the plaintiff became a shareholder in respect of one share in the Bank and he states that in the same month he was informed by brokers that there were irregularities in the management of the Bank in that the Bank had in contravention of its byelaws advanced more than it is authorized to advance to Bansilal Abirohand, Bomanji Dinshaw Petit Sons & Co., and Ahmedbhoy Habibbhoy. He also complains that the Directors get themselves elected by the aid of shares standing in the names of nominees and that there are only 7 instead of 9 Directors the full number permitted by the Act and he says he wishes to bring in 2 respectable men as additional Directors.

“The plaintiff says he is not on very hostile terms with any Director.

“The suggestion appearing on the face of the cross-examination is that the plaintiff does not claim inspection *bonâ fide* for the protection of any interest which is in jeopardy but merely wishes to cause annoyance to the Bank officials and particularly to Ahmedbhoy Habibbhoy who is one of the Directors. The inconvenience of allowing inspection and copying of the share register or of furnishing a copy thereof is not serious and the Court would as a matter of course order it if it were required with reference to any specific dispute or question in which the plaintiff is *bonâ fide* interested.

“But the Bank have never been asked whether there is any foundation for the charge of infringement of the byelaws and their Counsel has stated that a perfectly good answer to the charge could if necessary be given. The plaintiff however wishes to canvass an opposition to the Directors before he has taken any reasonable measures to ascertain whether there is any ground for his complaint.

1908

BANK OF
BOMBAY
v.
SULEMAN
SOMJI.

“The alleged use of the votes of the nominees, if it be a fact, is perfectly lawful since under section 22 of the Act the Bank is not affected by notice of any trust to which a share, may be subject in the hands of the registered holder.

“The statement that the plaintiff intended to bring on to the Board two additional Directors does not indicate any irregularity or dispute and it is to be observed that the plaintiff is not entitled to vote at any meeting since he does not hold a sufficient interest in corporation. See section 56 of the Act

“I am forced to the conclusion that the plaintiff does not require the inspection for the protection of any interest of his which is in jeopardy or with reference to any specific dispute in which he is interested but that he desires it for the reasons suggested by Counsel for the defendants to which I have already referred.

“I therefore find issue 2 in the negative and on issue 3 I find that the plaintiff is not entitled to the relief claimed and I dismiss the suit with costs.”

From that decision the plaintiff appealed and the appeal came before CHANDAVARKAR and BATTY, JJ., who reversed the decree of SCOTT, J., and allowed the plaintiff's claim in full. The case before the appellate Court is reported in I. L. R. 31 Bom. 319.

On this APPEAL.

Levett, K. C., and *Frank Russell K. C.*, for the appellants contended that the shareholders of the Bank were not entitled under the Presidency Banks' Act (XI of 1876), nor under the Common Law to inspection of the Bank's register of shareholders, or to copy or take extracts therefrom. Reference was made to the Presidency Banks' Act, 1876, sections 1, 4, 7, 17, 22, 37b, and 68; Companies' Act (X of 1868) sections 31 and 231; Companies Act (VI of 1882), sections 55 and 256 (it being pointed out that the provisions of the two last named Acts were expressly not applicable to the appellant Bank); *Rex v. Merchant Tailors' Company*⁽¹⁾; and *In re Burton*⁽²⁾. Even if any such right existed it was subject to a power in the Directors of the Bank acting in the *bond fide* exercise of their discretion to

(1) (1831) 2 B. & Ad. 115

(2) (1861) 31 L. J. N. S. Q. B. 62.

refuse to allow such inspection to be made or copies or extracts to be taken. In their case moreover the respondent did not require inspection for any reasonable or proper purpose, as for instance the protection of any specific interest of his own as a shareholder of the Bank. The appellant Bank, while denying his right to inspect the register at all reasonable times, offered to give him such inspection if he could satisfy them that he required for use in his interest as a shareholder. The respondent's reply was to bring this action. The decree of the appellate Court was wrong as being too wide, it should at all events have been confined to the actual occasion and the facts before the Court. It was submitted that that decree should be set aside, and that the reasons given in the judgment of the first Court (Scott, J.) were correct and that his decree should be upheld on this appeal.

1908

BANK OF
BOMBAY
v.
SULEMAN
SOMJI.

D. Gruyther, K. C., and *S. A. Kyffin* for the respondent contended that under the circumstances he was entitled as of right to the inspection claimed by him of the register of shareholders of the appellant Bank. He gave his reasons for wanting inspection in his letter to the Bank of 5th July 1903 in which he said, "there have been gross irregularities in the management of the Bank, in the election of Directors, in the manner the directors act, and other matters, and you preclude me from communicating with the shareholders or taking concerted action by withholding the inspection." One shareholder was entitled to communicate with his co-shareholders as to matters concerning their mutual interests in the management of the Bank, and for that purpose had a right to know who they were, information he could only get by inspecting the register kept by the Bank. Reference was made to *Mutter v. Eastern and Midlands Railway Company*⁽¹⁾. It was also contended that the Presidency Banks' Act, 1876, did not deprive the respondent of the statutory right of inspection conferred on him by the Indian Companies' Act (VI of 1882, ; and reference was made to other Bank Acts VI of 1839, section 11, and IV of 1862, section 13. [*Levett, K. C.*, those Acts relate to the Bank of Bengal, not to that of Bombay.] The

(1) (1888) 38 Ch. D. 92.

1908
 BANK OF
 BOMBAY
 v.
 SULEMAN
 SOMJI.

principles are the same with regard to all the Presidency Banks. It is not suggested that any interest of the Bank or of the shareholders would be prejudiced if the respondent were allowed inspection of the register of shareholders. The reasons given, the authorities cited, and the conclusions arrived at, in the judgment appealed from, it was submitted, were correct as to the right of the respondent to inspection and that decision should be upheld.

Levett, K. C., replied.

1908, *June 2nd*.—The judgment of their Lordships was delivered by

LORD ATKINSON:—This is an appeal from a decree dated the 22nd January 1907 pronounced by the High Court of Judicature at Bombay (sitting in Appeal from its Original Civil Jurisdiction), by which a decree dated the 6th August 1906 of the High Court (sitting in its Ordinary Original Civil Jurisdiction) was reversed and set aside. By this latter decree the respondent's action was dismissed with costs.

The respondent is a holder of one share in the appellant Company, the Bank of Bombay, one of the Banks incorporated in 1876 by the Indian Statute of that year entitled the Presidency Banks Act, 1876.

It was suggested that the respondent purchased this share for the purpose of causing annoyance to the Bank owing to the fact that some other litigation to which he was a party had been instituted against the Bank and was still pending. There was no satisfactory evidence given to sustain this allegation.

From the correspondence which took place between the respondent and the Bank before the institution of this suit, it is, in the opinion of their Lordships, perfectly plain that the respondent claimed a right to inspect the register of the shareholders of the Bank, and to be supplied with a list of such shareholders, as absolute and unqualified, as is that conferred on the shareholders of joint stock companies in this country by section 32 of the Companies Act, 1862, or in India by section 31 of the Indian Companies Act, 1866, and section 55 of the Indian Companies Act, 1882.

It must be taken that the appellants refused to recognize this absolute and unqualified right, or to comply with the claim based upon it, but in their letter of the 21st June 1906, which conveyed this refusal, they informed the respondent that they would be pleased to furnish him with the list he asked for if he would satisfy them that he required it for use in his own interests as a shareholder. It is, therefore, clear that, before action brought, the qualified and restricted right to inspect and take extracts from the register contended for in argument on behalf of the respondent was never asserted, nor any limited demand based upon it ever made or refused.

In the statement of claim the respondent, for the first time, endeavoured explicitly to base his right and title to inspect, copy, and take extracts, from the register on some definite matters in which he himself was interested. He alleges therein that he had observed irregularities in the management of the Bank, in the election of its Board of Directors, in the advancing of large sums of money to its Directors, and in other matters, and that he desired an inspection of the register to enable him to communicate with the other shareholders and, if possible, obtain their assent to certain resolutions for the better management of the affairs of the Bank and the removal of some of the Directors, which he intended to propose at the general meeting of the shareholders to take place on the 9th August 1906. But though this is the purpose for which, and the occasion on which, he claimed the right to inspect, copy, and take extracts from the register, the decree of the Court of Appeal contains no restriction whatever. It is couched in the widest terms. It ignores both the occasion and the purpose, and declares expressly that the respondent, as long as he is a shareholder of the Bank, is entitled at all reasonable times to inspect the register of shareholders of the Bank, and to copy and take extracts from the said register, and it then proceeds to order that the Bank do give such inspection and do allow the respondent, as long as he is a shareholder of the Bank, to take copies of and extracts from the register, and then restrains the Bank from preventing the respondent, as long as he is a shareholder of the Bank, from having access at all reasonable times to the register for the

1908

BANK OF
BOMBAY
v.
SULEMAN
SOMJI.

1908
 BANK OF
 POMAY
 v.
 SULEMAN
 SOMJI.

purpose of inspection and perusal, and from preventing the respondent, as long as he is a shareholder of the Bank, from taking copies of and extracts from the register.

This suit is in truth in its nature, though not in its form, somewhat of the character of an application for a writ of *mandamus*, and the principles regulating the issue of that prerogative writ should, their Lordships think, apply to a great extent to the granting of the relief prayed for in such a suit as this. One of these principles is this, that the writ will not be allowed to issue unless the applicant shows clearly that he has the specific legal right to enforce which he asks for the interference of the Court, that he has claimed to exercise that right and none other, and that his claim has been refused. Nothing less, therefore, than the absolute right claimed by the respondent in the correspondence above referred to could justify the decree appealed from in its present wide and unrestricted form. Now by section 231 of the above-mentioned Indian Act of 1866 and section 256 of the above-mentioned Act of 1832, the appellant Bank is expressly exempted from the operation of each of those statutes.

There is no statute conferring on the members of this corporation a right to inspect, copy, or take extracts from, the register of its shareholders or any other document belonging to it. The only right the respondent can have, therefore, against the Bank in reference to such matters, is that which at common law belongs to every member of a corporation. Their Lordships have been referred to several authorities in which the nature, extent, and measure of this right is explained and defined. The learned Judges in the Bombay Court of Appeal have referred to others. *Re v. Wilts and Berks Canal Company*⁽¹⁾; *Reg. v. Lewisham Union*⁽²⁾. The result of the authorities is summed up, in their Lordships' view correctly, in "Taylor on Evidence," Vol. 2, par. 1495 (10th Edition, 1906) in the words following:—

"On the application of a member, the King's Bench Division will, in general, grant a rule for a *limited inspection* of the documents of the corporation, if it be shown that such inspection is requisite with reference either to an action then instituted, or at least to some specific dispute or question depending in which the applicant is interested; but, even in this

(1) (1835) 3 A. & E. 477.

(2) (1897) L. Q. B. 498.

case, the inspection will be granted to such an extent only as may be necessary for the particular occasion. The rule was formerly sometimes laid down more broadly, and the language ascribed to the Court in one or two cases, might almost lead to the inference, that members of a corporation have an absolute right, whenever they think fit, to inspect all papers belonging to the aggregate body. But any such doctrine is now exploded; and the privilege of inspection is confined to cases where the member of the corporation has in view some definite right or object of his own, and to those documents which would tend to illustrate such right or object."

The strictness with which these limitations on the general and unqualified right of inspection are insisted on may be aptly illustrated by the case of *Rez v. Merchant Tailors' Co.*⁽¹⁾ In that case certain members of a corporation claimed the right to inspect all the documents belonging to that body on the grounds (1) that they had heard and believed the revenues of the corporation were misapplied through the malpractices of those who managed the corporation's affairs; (2) that the fines for admitting freemen and liverymen to the corporation had been unnecessarily and improperly raised; (3) that lavish expenditure had taken place (in some instances to the applicants' own knowledge) without the consent of the majority of the members of the corporation; (4) that a clerk of the corporation had, as the applicants had heard and believed, recently misappropriated funds of the company to a large amount, but that no accounts or information had been laid before the freemen or liverymen by which they could have ascertained the amount of the defalcations; and that they (the applicants) could not ascertain, unless they were allowed to look at the documents mentioned, whether the corporate funds had been properly applied and accounted for or not.

Every member of the corporation in this case obviously had an interest in each of the matters mentioned, but none of the applicants had in any of them any special interest different from that of his fellow members, nor had they any definite purpose, or object, in obtaining the inspection asked for other than (in the words of Littledale, J.) to see "if by possibility the Company's affairs may be better administered than they think they are at

(1) (1831) 2 B. & Ad. 115

1908

BANK OF
BOMBAY
v.
SULEMAN
SOMJI

1908
 BANK OF
 BOMBAY
 v.
 SULEMAN
 SOMJI.

present." And the writ of *mandamus* was accordingly refused in this case.

At the trial no witness other than the respondent was produced, and he was only tendered for cross-examination. He stated that he had heard through brokers that the Bank had advanced 6 lacs of rupees to three persons whom he named; that at elections the Directors transferred shares to nominees who voted for them (a practice not in itself illegal); that there were now only seven Directors, instead of the maximum nine; that he intended to bring in two respectable people, and that he had in the correspondence given his reasons for asking *inspection*. It is clear on this evidence that the respondent had no special interest in any of the matters he complained of, or any interest other than, or different from, that of each member of the corporation, and that he had no definite right or object of his own to aid or serve in asking for inspection of the register, or right or object which the register would illustrate; but that, on the contrary, his object was similar to that of the applicants in *Rex v. The Merchant Tailors' Co.*⁽¹⁾, namely, to obtain the inspection in order to communicate with the shareholders with the view of securing their help in bringing about an improvement in the administration of the corporation's affairs.

Their Lordships think that, on this point, the case is covered by the authority of *Rex v. The Merchant Tailors' Co.*⁽¹⁾, that the respondent is not in law entitled to the extended right to which the decree declares him to be entitled, that the limited and qualified right contended for at the trial was never put forward, or insisted on, before action brought, or any claim based upon it ever refused, and they are, therefore, of opinion that the decree appealed from is erroneous and should be reversed with costs, and the judgment and order of Mr. Justice Scott restored. They will humbly advise His Majesty accordingly. The respondent must pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellants:—*Cameron, Kemm & Co.*

Solicitors for the respondent:—*Payne & Lattey.*

J. V. W.

⁽¹⁾ (1831) 2 B. & Ad. 115.