

relevant with reference to the question whether the provisions of section 562 of the Code of Criminal Procedure would apply to this case, and it seems to me to be otherwise relevant on the question of punishment. The lower Court was justified in taking it into consideration in deciding the question of punishment after the accused was found guilty. I do not say that any previous conviction not covered by section 75, Indian Penal Code, is relevant to the question of sentence. But the question of relevancy of a previous conviction not falling under section 75, Indian Penal Code, must be considered and decided in each case as it arises with reference to the circumstances of that case.

Order accordingly.

R. R.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Davar.

IN THE MATTER OF THE INDIAN COMPANIES ACT (VI OF 1882), AND IN THE MATTER OF THE CREDIT BANK OF INDIA, LIMITED (IN LIQUIDATION):

FAZULBHOY JAFFER, APPLICANT AND APPELLANT, *v.* THE CREDIT BANK OF INDIA, LIMITED (IN LIQUIDATION), BY ITS OFFICIAL LIQUIDATOR, R. D. SETHNA, RESPONDENT.*

Company—Winding up—List of contributories—Minor—Estoppel by conduct after attaining majority—Indian Companies Act (VI of 1882).

F, a minor, applied for and was allotted certain shares in a limited company. He received dividends, and continued to do so after attaining majority. On the winding up of the company he was included in the list of contributories.

Held that, having intentionally permitted the company to believe him to be a share-holder and in that belief to pay him dividends since he attained majority, he was estopped by his conduct while a person *sui juris* from denying as between himself and the company that he was a share-holder.

View of Stirling J. in *Re Yeoland Consols Limited (No. 2)*⁽¹⁾ adopted.

*Appeal No. 8 of 1914.

⁽¹⁾ (1888) 58 L. T. 922.

1914.

EMPEROR

ISMAIL ALI
BHAI.

1914.

August 18.

1914.

FAZULBHROY
JAFFER
v.
THE
CREDIT
BANK OF
INDIA,
LTD.

A minor may be a member of a company under the Indian Companies Act (VI of 1882).

APPEAL from a decision of Macleod J. in Chambers in liquidation proceedings.

On 8th January 1910 one Fazulbhoy Jaffer, a minor, applied for and was allotted 50 shares in the Credit Bank of India, Limited, and thereafter received the dividends paid from time to time. In or about August 1912 he attained his majority, and continued to receive dividends up to the date when the Court ordered the winding up of the said Bank. He was duly included in the list of contributories made out by the official liquidator, but applied to have his name struck off the list on the ground that he was a minor at the date of purchase and therefore not liable.

His application was refused on the following grounds :—

MACLEOD, J. :—This is an application by a share-holder to be struck off the list of contributories on the ground that he was an infant at the time he applied for the shares and that, therefore, his contract with the Company was void. The applicant may be considered to be in the same position as a share-holder whose name has been put upon the register either without his consent or without any application on his part. As soon as he becomes aware of the fact he may refuse to accept the ownership of the shares within a reasonable time but if he allows his name to remain on the register without doing anything he must be taken to have acquiesced. In *Ebbetts' case*⁽¹⁾ a minor made a similar application, and Giffard L. J. remarked : "I do not rely on the transfer which he executed, but on the ground that he acquiesced for a lengthened period in being on the register."

⁽¹⁾ (1870) L. R. 5 Ch. 302.

Again in *Re Yeoland Consols Limited (No. 2)*⁽¹⁾ the applicant was put upon the register when a minor without any application on his part. On an application to remove his name from the list of contributories on the winding up Stirling J. said: "Being on the register of the Company for the shares he is *prima facie* entitled to them. Shares are property which may turn out to be valuable, and may on the other hand turn out to carry with them only a very serious liability. The law assumes that where property is assigned to a person the assignee accepts it, but he may refuse to accept it if he does so within a reasonable time." The present applicant knew he was on the register for the shares. From his coming of age in July or August 1912 till the winding-up order was made in November 1913 he must be taken to have known that his name was on the register and since he chose to allow his name to remain there without doing anything it cannot now be removed.

The applicant appealed.

Kanga appeared for the appellant.

The Official Liquidator appeared in person.

SCOTT, C. J. :—The appellant appeals from an order of the Chamber Judge including him in the list of contributories in the Credit Bank of India, a limited Company now being wound up by the Court. The appellant applied for fifty shares in this Company which were allotted to him on the 8th of January 1910 on payment of Rs. 10 per share, the nominal value being Rs. 50. If he has been rightly included among the contributories he will be liable for Rs. 40 per share. He contests his liability on the ground that he was a minor at the date of the allotment. It is not disputed that he attained majority in August 1912. He has

1914.

FAZULBHOY
JAFFER
v.
THE
CREDIT
BANK OF
INDIA,
LTD.

⁽¹⁾ (1888) 58 L. T. 922.

1914.

FAZULBHOY
JAFFER
v.
THE
CREDIT
BANK OF
INDIA,
LTD.

received dividends at the rate of six per cent. per annum on the sums paid upon his shares twice in each of the years 1911, 1912, and 1913, and he has raised no objection to his name being included in the register of members until January 1914. Under these circumstances it cannot be doubted that he has intentionally permitted the Company to believe him to be a shareholder and in that belief to pay him dividends on his shares since he attained majority. He is therefore estopped now by his conduct while a person *sui juris* from denying as between himself and the Company's representative that he is a share-holder.

This is sufficient to dispose of the appeal ; but we will express our opinion upon the point made in the excellent argument of Mr. Kanga. His contention was that the matter must be decided according to the law contained in the Contract Act under which a minor is not competent to contract and therefore it cannot be said that he has agreed with the Company to become a member which is one of the conditions of membership under the Companies Act of 1882, section 45. This argument would be more convincing if the words used in section 45 were "has contracted with the Company," for under the Contract Act it is not every agreement that is a contract. Moreover, it appears from the Statutory Article 45 in Table A of the Companies Act that a minor may be a member of a Company under that Act.*

It has been settled law in England for many years that a registered holder of shares in a Statutory Company is a person with a vested interest in property which may be burdened with an obligation to pay calls in the future. The registered member "cannot keep

*Note.—In the Indian Companies Act VII of 1913, Schedule 1, Table A, Article 62, which corresponds to Article 45 of Table A in the Act of 1882, all reference to minors is omitted. [Editor.]

the interest and prevent the Company from having it, and dealing with it as their own; without being bound to bear the burthen attached to it": *London and North-Western Railway Company v. M' Michael*.⁽¹⁾

This view of the position of a share-holder pleading minority when registered was taken by Stirling J. in *Re Yeoland Consols Limited (No. 2)*⁽²⁾ and the learned Chamber Judge has, we think, rightly adopted it in the present case. The same principle underlies section 248 of the Contract Act. *Qui sentit commodum sentire debet et onus*.

Attorneys for the appellant: Messrs. *Jehangir, Sirvai, Minocheher and Hiralal*.

Attorneys for the respondents: Messrs. *Payne and Co.*

Appeal dismissed.

K. McL. K.

⁽¹⁾ (1851) 20 L. J. Ex. 97 at p. 101. ⁽²⁾ (1888) 58 L. T. 922.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

SUBAPPA BIN SHENKAREPPA NADGAUDA (ORIGINAL PLAINTIFF),
APPELLANT v. VENKAPPA BIN GOLAPPA AND OTHERS (ORIGINAL
DEFENDANTS), RESPONDENTS.*

1914.

August 31.

Limitation Act (IX of 1908), Articles 142, 144—Suit for possession—

De facto possession with defendant—Burden of proof.

Where the plaintiff alleges possession of land, and it is found that part of the land is *de facto* in possession of the defendant, the case falls under Article 142, and not Article 144, of Schedule II to the Indian Limitation Act (IX of 1908). Every suit for possession of immovable property, in which the plaintiff alleges that he has had possession, must fall under Article 142. It is only where the plaintiff does not allege that he has ever been in possession that the case will fall under Article 144. In the former class of cases the

* Second Appeal No. 543 of 1913.