

ORIGINAL CIVIL.

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

1915.
February 18.

IN THE MATTER OF THE INDIAN COMPANIES' ACT VI OF 1882 AND
IN THE MATTER OF THE INDIAN SPECIE BANK, LTD. (IN LIQUIDA-
TION).

SORABJI NUSSERWANJI POCHKHANAWALLA (APPLICANT-APPELLANT)
v. C. A. PATWARDHAN, THE CHIEF OF SANGLI AND OTHERS
(RESPONDENTS). *

The Indian Companies Act (VI of 1882), sections 58, 147—Liquidation—List of contributories—Rectification of register of shareholders—Transfers signed by transferor and transferee and lodged before winding up of the Company—Practice of the Company in approving of the transfer—Transferee's name not registered, effect of—No default, or unnecessary delay, or absence of sufficient cause in dealing with shares—Liability of transferee as contributory.

The applicant, a shareholder in the Indian Specie Bank Ltd., sold some of his shares to the respondents by various transfers which were lodged with the Company for registration. The Company, however, went into liquidation before the transfers were in due course approved of by the Board of Directors. According to the practice observed by the Company, transfers lodged up to the end of the previous week were placed before the Board of Directors at their meeting in the following week. The Company went into liquidation on the 29th of November 1913. At a meeting of the Board of Directors held on the previous day, the transfers lodged in the previous week up to the 22nd of November only were considered. The transfers in dispute were lodged with the Company between the 25th and 28th of November 1913. The applicant was accordingly placed by the liquidator on the list of contributories in Schedule A for the shares which stood in his name on the 29th of November 1913. The applicant contended that the register of share-holders should be rectified by the Court under sections 58 and 147 of the Indian Companies Act (VI of 1882) by substituting the names of the respondents as transferees in place of his own name.

Held, that as the applicant had not proved that there was either absence of sufficient cause, or default, or unnecessary delay on the part of the Company in dealing with the transfers, the register of share-holders could not be rectified.

* O. C. J. Appeal No. 50 of 1914.

PROCEEDINGS in liquidation.

Application for rectification of register of shareholders under section 58 of the Indian Companies Act (VI of 1882).

The applicant Sorabji Nusserwanji Pochkhanaywalla held a large number of shares of the Indian Specie Bank, Limited. By an order of the High Court of Bombay made on the 29th of November, the affairs of the said Company were ordered to be wound-up.

Prior to the 29th of November 1913 the applicant sold 384 shares to C. A. Patwardhan, the Chief of Sangli, 25 to Damodar Hemandas, 30 to Girdharlal Harilal, and 5 to Jagjivandas Kahandas. The transfers had been executed by the transferor and the transferees and had been lodged with the Company for registration between the 25th and 28th of November 1913. None of the transfers had been initialled by any of the Directors to show that they were approved of by the Board, and consequently the names of the transferees did not appear on the register of share-holders. The applicant was accordingly placed on the list of contributories in Schedule A for all the shares which stood in his name on the 29th of November 1913 when the winding-up commenced. The applicant however contended that the names of the transferees as the equitable owners of the shares should be entered in place of his name in Schedule A in respect of the shares transferred, his name being relegated to Schedule B of the list of contributories.

The practice of the Company in registering transfers was that only transfers lodged up to the end of the previous week were placed before the Board of Directors at their meeting in the following week. The usual day for Board meetings was Tuesday. On Tuesday the 25th of November 1913, there was no meeting

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and the Board did not meet until Friday the 28th of November 1913 when transfers lodged in the previous week up to Saturday, the 22nd, were placed before them. The transfers signed by the applicant and the respondent could not be and were not placed according to the practice of the Company before the Board of Directors on the 28th of November 1913.

Macleod J. held that there was no default or unnecessary delay on the part of the Company in dealing with the transfers lodged with the Company before the commencement of the winding up, and his Lordship accordingly dismissed the summonses issued at the instance of the applicant against the respondents.

The following judgment was delivered by the learned Chamber Judge.

MACLEOD, J. :—These are four summonses issued at the instance of S. N. Pochkhanawalla (hereinafter called the applicant) which were consolidated and adjourned into Court under the following circumstances.

The applicant had been placed by the Liquidator on the list of contributories in Schedule A for a very large number of shares which stood in his name on the register of share-holders on the 29th November 1913 when the winding-up of the Company commenced.

On the day fixed for the settling of the list of contributories, a great many persons appeared in answer to notices served upon them by the applicant, who wished to have their names substituted for his in Schedule A in respect of various lists of shares sold to them. The four persons above-named appeared by counsel and as they were prepared to proceed with the hearing of the question in dispute, although the applicant should have taken out summonses according to the regular

procedure, I commenced the hearing and directed the applicant to remedy the defect by applying for summonses which has now been done.

The applicant, before the winding-up commenced, sold 384 shares to Patvardhan, 25 to Damodar Hemandas, 30 to Girdharlal Harilal and 5 to Jagjiwandas Khandas ; the transfers had been executed by the transferor and his transferees and had been lodged with the Company for registration, but they have not been initialled by any of the Directors to show they have been approved of by the Board and consequently the names of the transferees do not appear on the register of share-holders. The applicant now contends that the names of those transferees should be entered in place of his name in Schedule A in respect of the shares so transferred by him, his name being relegated to Schedule B. In the same way, the applicant had sold a number of shares to a number of other persons against whom summonses have been granted, and the decision in the present summonses will govern the result of those summonses.

The following Articles of Association are relevant for the purpose of this case.

45. Every such instrument of transfer shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the register of share-holders in respect thereof, and a fee of such amount as the Directors may from time to time direct not exceeding four annas per share shall be payable by the transferor in respect of every share transferred.

46. The Board may decline to register any transfer of shares in respect whereof any share-holder is indebted to the Company for calls, interest or otherwise, or whilst any sum of money is due from such share-holder to the Company, either solely or jointly, on any account whatsoever.

47. The Board may also decline to register any transfer of shares if the Board shall not approve of the proposed transferee and the Board shall not be obliged to give any reason for declining to do so. The member desiring

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to sell his share shall, in every case, submit a writing in the following form for the approval by the Directors of the intended transferee if the Directors require to do so. The registration of a transfer shall be conclusive evidence of the approval by the Directors of the transferee being a member of the Company.

Under section 147 of the Indian Companies Act, 1882, which governs these proceedings, the Court has power when settling the list of contributories to rectify the register of members in all cases where such rectification is required in pursuance of section 58.

Section 58 is as follows:—

58. If the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the Company is situate, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such application and any damages the party aggrieved may have sustained.

The Court may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the Company, and whether there has or has not been default on the part of the Company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register: Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal in the manner directed by the Code of Civil Procedure shall lie.

This section does not appear to have been the subject of any reported decision of the Indian Courts but the corresponding section 35 of the English Companies' Act, 1862, has been a constant source of difference of

opinion amongst the learned Judges in decided English cases. The word 'fraudulently' appears to have been inserted in section 58 in consequence of the decision in *Ex parte Kintreā*,⁽¹⁾ but it hardly appears necessary. The words in the second part 'whether there has or has not been default on the part of the Company' appear to have been inserted as the result of the decision in *Ex parte Shaw*⁽²⁾, but it does not seem that any importance need be attached to them as they have been omitted in the corresponding section 38 of the Indian Companies Act, 1913.

The section runs as follows :—

38. (1) If—

(a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a Company ;
or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the Company, or the Company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application, or may order rectification of the register and payment by the Company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the Company on the other hand ; and generally may decide any question necessary or expedient to be decided for rectification of the register :

Provided that the Court may direct an issue to be tried in which any question of law may be raised ; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908, on the grounds mentioned in section 100 of that Code.

⁽¹⁾ (1869) L. R. 5 Ch. 95.

⁽²⁾ (1877) 2 Q. B. D. 463.

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This section, which has been redrafted to correspond with section 32 of the English Companies Act, 1908, shows how the first para. of section 58 should be read, viz.,

If—

(a) the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by the Company under this Act, or

(b) if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company...

The word 'entered,' according to its ordinary grammatical construction, must refer to an original entry of a person on the register in respect of one or more shares and it is to the original entry that objection must be taken, and not to the fact that although the original entry is unimpeachable, circumstances have occurred which require the objector's name to be removed. So the word 'omitted' must refer to an act of omission by the Company either by refusing or neglecting to place a certain name on the register. But it may be said that a person rightly entered on the register who has sold his shares may complain that his transferee's name has been omitted without sufficient cause in which case he could apply under the first part of the section as well under the second, and that is in accord with the judgment of Brett L. J. in *Ex parte Shaw*⁽¹⁾, where he says: "It seems to me that no case can be within the section which is not within the first part of it; but there may be cases within the first part that are not within the second." The decision in that case seems to set at rest the question whether in order to give jurisdiction to the Court to order rectification of the register under section 35 it was necessary

⁽¹⁾ (1877) 2 Q. B. D. 463 at p. 482.

that there should be actual default or unnecessary delay by the Company. Shaw instructed Smith to purchase for him forty shares in the Diamond Rock Boring Company. Smith arranged with Sir E. Piers to sell forty shares of which he was the registered owner. Piers executed the transfer and sent it with the scrip to the Company for the transfer to be certified. Piers then sent the transfer to Shaw who returned it executed to Smith. Smith then disappeared with the transfer and the Company declined to register Shaw as the owner of the shares. There was no question of any default on the part of the Company which submitted itself to the Court. It was held the case came within the first part of the section which moreover, later on, gave the Court jurisdiction to decide in any such proceeding any question of title between members or alleged members or between members and alleged members on the one hand and the Company on the other hand.

It must be noted that in *Shaw's case*⁽¹⁾ the Company had refused to register Shaw as the owner of the forty shares, that the Company was not in liquidation and that there was a question in dispute between Shaw and Piers as to who was the owner of the shares. In the present case there is no dispute regarding title between the applicant and his opponents. No doubt when the bargain was completed and the transfers executed, the transferees became the equitable owners of the shares and the question is whether the register, which did not contain their names when the winding-up commenced, should be rectified by their names being entered.

Mr. Setalvad contended that this should be done irrespective of the question whether there was default or unnecessary delay on the part of the Company. He

(1) (1877) 2 Q. B. D. 463.

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relied on the decision of Malins V. C. in *Ward and Garfit's case*⁽¹⁾. On the 3rd May 1866, Garfit executed a transfer of forty shares in Overend, Gurney & Co., to Ward who executed the transfer on or before the 9th May when the transfer was lodged for registration with the Company. The Company stopped business on the 10th May and a petition for winding-up was presented on the 11th. Thereafter a voluntary winding-up was determined on by the shareholders and an order for continuing the winding-up under the supervision of the Court was made on the 17th June. The Liquidators registered all the transfers lying at the Company's office at the time of the stoppage including the transfer to Ward. The articles of Association contained Articles similar to Articles 45-48 of the Company in this case. The Vice Chancellor said (p. 196) :

"The terms of the 35th section are very extensive, and give a general power, of which there are numerous instances ; and the Court may, either with or without costs, if it is satisfied of the justice of the case, make an order to rectify the register generally. That is an absolute power, where the circumstances are such as, in the opinion of the Court, call for its exercise. The Court is armed with power (which is the important part of the section) to decide any question ' necessary or expedient ' for the rectification of the register ; and I am now called on to decide whether the equitable title, which is clearly vested in Mr. Ward, must not be completed by making it legal, and whether he must not fulfil all the obligations which such legal title would throw upon him. I am of opinion that I am armed with this power, and that Mr. Ward's name, and not Mr. Garfit's, ought to be put on the register."

In *Musgrave and Hart's case*⁽²⁾ Malins V. C. expressed the same opinion as in *Ward's case*⁽¹⁾ but refused to rectify the register on the grounds that the purchaser had not executed the transfer before the winding-up order was made. But the Vice Chancellor expressed the opinion that he would have done so but for the

⁽¹⁾ (1867) L. R. 4 Eq. 189.

⁽²⁾ (1867) L. R. 5 Eq. 193.

recent decision of the Appeal Court in *Marino's case*⁽¹⁾. In that case the transfer had been sent to the Company for registration without being executed by the transferee. It was proved that it had been the uniform usage for the Company to require the transfer to be executed by both transferor and transferee although the Company had not adopted the Schedule in the Act which made that imperative. The Vice Chancellor quoted the following passage from the judgment of Turner L. J. whose liberal interpretation of section 35 met with the approval of the Appeal Court in *Ex parte Shaw*⁽²⁾:

"The respondent has to make out that the Company was guilty of default in not taking his name off the register, although, according to their ordinary practice, his name could not be taken off except upon production of a deed, executed not only by himself as the transferor of the shares, but by the person to whom he transferred them."

In *Shepherd's case*⁽³⁾ Shepherd sold five shares in the Joint Stock Discount Company to Higgs, both parties executing the transfer which was lodged on or before the 3rd March 1866 for registration with the Company. On the 3rd March at a special meeting, the Directors resolved that no transfer of shares now in the office be registered without express sanction of the Board except to new Directors. A petition for winding up the Company was presented on the 7th March and a winding-up order was made. It seems that Higgs had no objection to being put on the register. Romilly M. R. said (p. 566):

"I think I cannot put Mr. Higgs upon the register. I am of opinion the directors had the power, if they exercised it *bona fide*, and considered it to be for the benefit of the Company, to refuse to make the transfer... That being so, I am of opinion that the Official Liquidator had no power afterwards to put anyone else upon the list of share-holders."

(1) (1867) L. R. 2 Ch. 596.

(2) (1877) 2 Q. B. D. 463.

(3) (1867) L. R. 2 Eq. 564; L. R. 2 Ch. App. 16.

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In the Appeal Court Turner L. J. said, after quoting section 35:

"According to this section, in order to maintain Mr. Shepherd's case, it is necessary for him to show that there was default or unnecessary delay on the part of the Company in entering on the register the transfer of his shares to Mr. Higgs. But how do the facts stand? The transaction between Shepherd and Higgs takes place in the month of December, the transfer is completed as between the parties, but nothing is done as between either party and the Company until the 3rd of March. According to the course of practice of this Company, the ordinary meetings of the directors were held once a week, and their last weekly meeting was on the 1st of March. It was not, therefore, until the 8th of March that, in the ordinary course of business of the Company, the consideration of this transfer could come under the notice of the directors. But before the 8th of March arrived, the Petition, on which the winding-up order was afterwards made, had been presented. . . I think, therefore, this is not a case in which it can be said that there was any default, or any unnecessary delay, on the part of the Company in entering the name of Higgs on the register."⁽¹⁾

It seems in this particular case when the transfer was not lodged in time to give the Directors an opportunity of considering whether it should be sanctioned or not the order of the Master of the Rolls was right, and Cairns L. J. says at page 21:

"It seems to me impossible to say, in the words of the Act of Parliament, that on the 7th, the day on which the winding-up commenced, and after which nothing could be done, unnecessary delay had taken place in entering upon the register the fact of Mr. Shepherd's having ceased to be a member."

Malins V. C. in *Ward and Garfit's case*⁽²⁾ says at page 196 with reference to this case:

"*Shepherd's case*⁽¹⁾ turned on the fact that the directors had exercised their discretion as to approving of a transferee; and the Master of the Rolls and the Court of Appeal proceeded on this ground, that the exercise of discretion could not be altered by the Court."

With due respect it seems impossible to reconcile the Vice Chancellor's method of disposing of the

⁽¹⁾ (1867) L. R. 2 Ch. App. 16 at p. 18.

⁽²⁾ (1867) L. R. 4 Eq. 189 at p. 196.

decision in *Shepherd's case*⁽¹⁾ either with the facts of the case or with the passages above quoted from the judgments of the Appeal Court. Moreover, the learned Vice Chancellor appears to have overlooked the fact that jurisdiction can only be exercised under the section where, without sufficient reason, a person's name has been entered or omitted and it could not be said that a transferee's name had been omitted without sufficient reason when the Directors had had no opportunity of exercising their discretion or where, as in *Musgrave and Hart's case*⁽²⁾, the transferor had not even executed the transfer.

The wide jurisdiction given by the second part of the section can only be exercised when grounds have been established under the first part for exercising such jurisdiction. If two parties are disputing as regards the ownership of a share the Company would be justified in declining to do anything until the dispute was settled, and in such a case the Courts may exercise their discretion in deciding the dispute in a summary way under section 58 though they will probably decline if the matter is in any way complicated. But the mere fact that a share-holder has made a contract with another party to sell his share cannot by itself bring about an omission by the Company without sufficient cause to enter the purchaser's name on the register of share-holders. If the Vice Chancellor's view was the right one, Higgs was the equitable owner on the 3rd March and, therefore, Higgs' name had been omitted without sufficient cause. Then again the facts, as stated in the report, show that the Directors did not exercise any discretion as to approving the transferees; on the 3rd March they passed a resolution which, in

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⁽¹⁾ (1866) L. R. 2 Eq. 564 ; L. R. 2 Ch. App. 16.

⁽²⁾ (1867) L. R. 5. Eq. 193.

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the words of Cairns L. J., amounted to saying: "We reserve to ourselves the sole exercise of the right to look into the circumstances of each transfer, and we give notice to our officer that, until we have pronounced an opinion upon the transfers, he is not to register them."⁽¹⁾

There can be little doubt that if *Ward and Garfit's case*⁽²⁾ had come before the same Bench they would have refused to put Ward's name on the register.

In *Nation's case*,⁽³⁾ which also arose out of the winding up of the Joint Stock Discount Co., the transfer by Nation in favour of Binney was lodged with the Company for registration on the 17th February. On the 28th February, in consequence of a resolution passed at a General Meeting of the Company, nearly all the Directors resigned and new Directors were elected. On the 1st March, an Ordinary Meeting of Directors was held, but no transfers were brought before the Directors at that Meeting. Nation having been placed on the list of contributories applied that the list might be varied by excluding his name and substituting Binney. Lord Romilly M. R. allowed the application on the ground that there had been unnecessary delay, because the transfer was not confirmed at the Meeting of the Directors on the 1st March at which, in the ordinary course of business, it would have been confirmed.

In *Walker's case*⁽⁴⁾ the contract to sell certain shares was made after the winding-up commenced, but before the winding up order was made the transferee did not execute the transfer. The transferor applied to have the purchaser registered as the owner of the shares. Kindersley V. C. in refusing the application, said :

⁽¹⁾ (1866) L. R. 2 Ch. 16 at p. 20. ⁽²⁾ (1867) L. R. 4 Eq. 189.

⁽³⁾ (1866) L. R. 3 Eq. 77. ⁽⁴⁾ (1866) L. R. 2 Eq. 554.

"It has been contended that the parties may supersede the necessity of bringing the matter before the board of directors; but the board of directors had the right to determine whether they would accept the transferee or not, and this Court has no power to deprive them of that right, or to substitute its own discretion for theirs, and to direct that the transferee shall be registered as a share-holder."

It seems, however, that, in the opinion of Romilly M. R. and Turner L. J., if the Directors have had an opportunity of exercising their discretion before the winding-up and have not exercised it, that amounts to delay which entitles the Court to act as if they had exercised their discretion. In *Fyfe's case*, *In re Joint Stock Discount Co.*⁽¹⁾ Giffard L. J. followed the decisions in *Nation's case* and in *Shepherd's case* removing the applicant's name from the register on the ground that there had been delay and neglect on the part of the Company in not registering the transfer on the 1st March.

In *Marshall v. Glamorgan Iron and Coal Co.*,⁽²⁾ Giffard V. C. said :

"Again, if a man being a share-holder has sold his shares, he is not relieved from being a contributory, if, owing either to his own neglect or that of his transferee, or if, in fact, owing to any cause except the neglect of the Company, his transferee's name has not been substituted for his at the date of the winding-up. If the omission to substitute the name of the transferee is owing entirely to the neglect and default of the Company he will be relieved."

In *Ward and Henry's case*⁽³⁾ the facts were that Ward sold shares to Stafford through a broker Henry and executed a transfer which Stafford did not register. Stafford agreed to sell the shares to Henry but refused to execute a transfer. Henry then persuaded Ward to execute a fresh transfer to him which Henry took in for registration, but the Directors in consequence of a

(1) (1869) L. R. 4 Ch. 768. (2) (1868) L. R. 7 Eq. 129 at p. 137.

(3) (1867) L. R. 2 Ch. 431.

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notice from Stafford refused to register it. Henry filed a bill against Stafford for specific performance to which Stafford put in an answer. Ten days later a petition for winding-up was presented on which a winding-up order was made. The master of the Rolls put Henry on the list of contributories. On appeal, Turner, L. J. held that the Court had jurisdiction under section 35 but the case was one in which the jurisdiction should not be exercised. Cairns L. J. held that there had been no default on the part of the Company and there was, therefore, no case for the rectification of the register. Though it must now be taken as settled law that under section 35 of the English Companies Act, 1862, the Courts had, and under section 32 of the Indian Companies Act, 1908, the Courts have, jurisdiction to decide questions in dispute between members and alleged members whether or not there has been default on the part of the Company, still that jurisdiction will not be exercised after a winding-up has commenced unless there has been default or unnecessary delay on the part of the Company. Even if there has been such default or delay the Court will not rectify the register at the instance of the Liquidator: *Sichell's case*⁽¹⁾; see Buckley, p. 86(9th edn.) and Halsbury's Laws of England, Vol. V, p. 498. If it was not for the decision of Malins, V. C. in *Ward and Garfit's case*⁽²⁾ the applicant's contention would be unarguable, but both the learned authors above mentioned, while ignoring that decision, rely on the higher authority of *Shepherd's case*⁽³⁾ for the proposition they lay down, which has never been considered as having been over-ruled by the decision in *Shaw's case*⁽⁴⁾, in which there was a question of disputed ownership of shares in a going concern, which the

(1) (1867) L. R. 3 Ch. 119.

(2) (1867) L. R. 4 Eq. 189.

(3) (1866) L. R. 2 Eq. 564; L. R. 2 Ch. 16.

(4) (1877) 2 Q. B. D. 463 at p. 482.

Directors left to be decided by the Court. In the case of the register of a Company being wound up, it has been said that as the tree falls so it must lie. The register must be correct unless there has been default or delay on the part of the Company. In other words the applicant must show sufficient reason for the omission of the respondent's name on the register and there can be no sufficient reason unless there has been default or delay on the part of the Company. Evidence has been given on affidavit and *viva voce* regarding the practice of this Company in registering transfers. On behalf of the applicant, it is alleged that the practice was for all transfers received up to the day before a Directors' Meeting to be placed before the Board; on behalf of the respondents, that only transfers lodged up to the end of the previous week were placed before the Board at their Meeting in the following week.

The usual day for Board Meetings was Tuesday. On the 25th November, there was no Meeting as the Manager was too busy engaged in certain Court matters. The Board did not meet until Friday the 28th when it seems that transfers lodged up to Saturday the 22nd were placed before them. At least one transfer lodged after the 22nd was placed before them especially for disapproval as the transferee was a minor.

The transfers signed by Patvardhan were lodged with the Company as follows:—

1 Tr. 65 Shares	On the 25th November.
2 Tr. 95 "	Do.
3 Tr. 5 "	Do.
4 Tr. 5 "	Do.
5 Tr. 5 "	Do.
6 Tr. 10 "	On the 26th November.
7 Tr. 10 "	On the 27th November.
8 Tr. 10 "	On the 27th November.
9 Tr. 10 "	On the 27th November.
10 Tr. 159 "	Undated but from its serial number lodged presumably on the 28th November

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The transfer signed by D. Harnamdas was lodged on the 27th November.

The transfer signed by Girdharlal H. Mehta was lodged on 27th or 28th.

And the transfer signed by Jagjivandas K. Shah was lodged on the 27th. Obviously if the Meeting had been held on the usual day all these transfers were lodged too late to be placed before the Board.

The only Director who was called to give evidence was Sir Jugmohandas Varjivandas. He said the usual practice was for transfers completed in the previous week to be put before the Board at their Meeting in the following week. The transfers were initialled by the Manager, Chunilal, or his assistant Vithaldas to show there was no objection to the transfer and when so initialled they were approved by the Board without further inquiry. The Directors initialled the transfers, if approved. They might initial them before the actual business of the Meeting commenced. The minutes of Directors' Meetings do not show the serial numbers of the transfers which were approved of by the Directors, but only the numbers of those transfers which were not approved. It has been argued that because the transfer of share No. 56342 which was lodged on the 26th November 1913 was rejected, all transfers lodged up to the 26th November were placed before the Board and approved, but it is quite clear that no transfer which has not been initialled by the Directors can be said to have been approved by the board. The above mentioned transfer was brought before the Board at once to be rejected so that the vendor and the purchaser might know as soon as possible that the transfer would not be allowed. In re-examination Sir Jugmohandas said that there was nothing to prevent Chunilal and Vithaldas placing before the Board transfers lodged

on the day previous to the Meeting. None of the other Directors have come forward to depose that the practice was otherwise than as stated by Sir Jugmohandas. I do not attach much importance to the evidence of Hiralal Motiram who does not seem to have been actually attached to the Share Department. Parashram Vasudev was the counter-clerk in the Share Department. It was his duty to receive transfers and see that the signatures were in order. If they were, he took the transfer to the clerk in charge of the Department for him to initial it. In the evening receipts were made out for the shares lodged for transfers during the day. The following day, the transfers with the shares and receipt-forms were sent to the Managing director, and would come back within an hour or so. The witness kept a rough register book in which transfers were entered, but I could not get from him a satisfactory answer to the question when this register was made up. He first said "on the evening of the day on which an application was received it was entered on the rough register." Then he said, 'the rough register was made up from the receipt-book when the application was received back from the managing Director.' Finally he said, 'I entered the particulars on the rough register the day I received the application.' The witness also said that Board meetings were generally held on a Tuesday. Transfer forms received from the last Tuesday up to the Monday before the Meeting were placed before the Board. He used to make the transfers into a bundle and put them the same day on the desk of the clerk in charge who sent them to the Directors. Before the 28th November work had fallen into arrears and, therefore, all the transfers could not be sent up as usual. He said the practice was not to send up transfers to the Board before they were entered in the rough register; but this statement was not quite correct, or, at any rate,

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the practice was not observed during the last week. At the last Meeting transfers received before the 23rd November were placed before the Board and a great many of them had not been entered in the rough register. It must be noted that this witness, whatever the actual practice was, had nothing whatever to do with the decision as to what forms should be placed before the Board; that was the duty of the clerk in charge of the Share Department. Mathuradas was the clerk in charge from 1907 until May 1913 when he was appointed the Manager of the Poona Branch. He used to send the transfers up to the Board Meetings. He was very positive that his practice was to send up transfers which had been lodged up to the Saturday previous to the day on which the Board Meeting was held. There was nothing unreasonable in such a practice nor was there any reason why the witness, who appeared to me to be a most respectable man, should say that he did not send up forms lodged on a Monday if, as a matter of fact, he usually did so. When he took charge of the Department he found there was no settled practice and so he instituted the practice he deposed to. If there was any doubt about a transfer form or if there were reasons for objecting to it, it might be placed before the Board at once in order that the purchaser might have notice as soon as possible.

It was the duty of the witness to make enquiries about the purchasers and to report to the Managing Director.

It certainly does appear from the records that at the Board Meetings held after the transfer books were re-opened after being closed for issue of dividend warrants, transfers lodged on the previous day may have been placed before the Board for approval, but there is no certainty about that since the minutes do not give particulars of transfers approved but only of transfers

rejected. Mathuradas did say that on such occasions such applications as were complete could be placed before the Board but that would not be possible with applications lodged the day before. The fact that a transfer lodged on the previous day was rejected by the Board the next day does not prove, as I have already shown, that all the other transfers lodged that day were placed before the Board and approved. After Mathuradas left, one Khandwalla took his place, but he frankly admitted he knew nothing about the business and did not know up to what day transfers submitted to a Board Meeting had been lodged.

Vithaldas Parekh was assistant to the Managing Director and used to initial transfers from August 1913. He said, as far as he knew, applications received up to the day previous to the Board Meeting were presented to the Board, but he had to admit it was not a part of his duty to see which forms were submitted to the Directors and he could not say what was the practice of the Head of the Share Department when putting transfer forms before the Board. He was directly interested in these proceedings as he had sold fifty shares and lodged the transfer on the 25th November. Pereira, the ledger-clerk, said that transfer forms lodged prior to the day of the Directors' Meeting generally came to him to be posted, after having been approved by the Board, but all the witness had to do was to post the transfers in the ledger, and in cross-examination he said it was generally a week before the Directors approved a transfer after it was lodged. The witness seemed to me to have been brought to depose to a practice about which he knew nothing. I asked him whether it was his business to consider how many days had elapsed between the date on which the transfer had been lodged and the date of the Directors' Meeting at which it was approved and he said no.

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It is impossible, therefore, on this evidence, to come to the conclusion that, according to the usual practice, transfers lodged up to the day before a Directors' Meeting were placed before the Board. It is not even certain that the transfers were entered in the rough register before they were initialled by the Managing Director and if they were entered after being so initialled they could not, in the ordinary course, have been placed before the Board until the second day at the earliest. Even by the 28th November all the transfers lodged up to the 22nd had not been registered while those lodged up to the 27th November had been initialled by Vithaldas. But even assuming that in the ordinary course of business transfers lodged the day before the Meeting were placed before the Board, it cannot be said under the particular circumstances of this case that there was any unnecessary delay in not approving, on the 28th, transfers lodged on the 25th and after.

A petition to wind up the Company had been admitted on the 19th with the result that a very large number of share-holders came out to sell their shares. The staff of the Bank was quite unable to cope with the rush of transfers, so that on the 28th November even those which had been lodged up to the 22nd November had not been regularly dealt with. Therefore, it was quite impossible to deal with transfers lodged after the 22nd except, in the most cursory fashion, for the purpose of seeing whether there was any objection on the face of the transfers which would necessarily lead to their rejection. Considering the allegations made in the petition of the 19th regarding the affairs of the Company the Directors would only have been doing their duty if they had refused to deal with any further transfers until they had satisfied themselves that those allegations had no foundations in fact, but it seems that without making any inquiries they were prepared to go on

approving as many transfers as were placed before them. The fact that practically all the transfers lodged up to the 22nd November were placed before the Board, although in consequence of their number they had not all been entered in the rough register, adds considerable support to the evidence of Mathuradas. Therefore, I find that the usual practice was to collect transfers up to a Saturday and put only those before the Board at their Meeting in the week following, whether it was held on Tuesday or on a later day in the week. Even assuming that transfers lodged up to the day before the Meeting were placed before the Board it was impossible to do this at the Meeting of the 28th owing to the enormous number of transfers. Therefore, in no case was there default or unnecessary delay in dealing with the transfers in these summonses.

In particular the applicant can have no case as regards the transfers out of those for 159 shares evidently lodged on the 28th November which were incomplete owing to alterations not having been initialled by both parties and which would not, in any event, have been placed before the Board.

The Liquidator has rightly taken no part in these proceedings except to assist the Court when required.

The applicant thereupon appealed.

Setalvad and *Kanga*, for the appellant.

Strangman, Advocate General, and *Inverarity*, for respondent No. 1.

Jinnah and *Desai* for respondents Nos. 2, 3 and 4.

Campbell, for respondent No. 5.

Setalvad.—Purchase of shares complete on signing of transfers. Ownership has passed to the transferee, and the register of shareholders must be rectified. This should have been irrespective of delay. Transferor

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entitled to indemnity. No concern of his whether shares actually transferred in register. Contract of sale does not imply any undertaking that names will be changed on register. Transferee must indemnify transferor against calls: *Loring v. Davis*⁽¹⁾; *London Founders Association v. Clarke*⁽²⁾; *Kellock v. Enthoven*⁽³⁾. Section 58 applies "whether there has or has not been default on the part of the Company." These words were omitted from section 32 of the Act of 1908. In England if the Court is satisfied that title is in purchaser it will order registration. See *Ward's case*⁽⁴⁾; *Shepherd's case*⁽⁵⁾; *Ex parte Shaw*⁽⁶⁾; *Ward and Garfit's case*⁽⁷⁾; *Walker's case*⁽⁸⁾; *Musgrave and Hart's case*⁽⁹⁾; *Nation's case*⁽¹⁰⁾.

SCOTT, C. J.:—This appeal arises out of a decision of the learned Chamber Judge upon four summonses taken out in the matter of the liquidation of the Indian Specie Bank. In those summonses the applicant, Sorabji Nusserwanji Pochkhanawalla, calls upon the opposing parties, C. A. Patwardhan, Damodardas Hemandas, Girdharlal Harilal Mehta and Jagjiwandas Kahandas Shah to show cause why the list of contributories should not be amended by substituting their names in place of the name of the applicant in regard to the shares specified in the summonses. The application is made under section 58 of the Indian Companies Act (VI of 1882) and the Court is asked to make an order upon the summonses on the ground that it has the power under section 147 of settling the list and rectifying the register in cases in which such rectification is required in pursuance of section 58. Section 58 provides that

⁽¹⁾ (1886) 32 Ch. D. 625.

⁽²⁾ (1888) 20 Q. B. D. 576.

⁽³⁾ (1874) L. R. 9 Q. B. 241.

⁽⁴⁾ (1866) L. R. 2 Eq. 226.

⁽⁵⁾ (1866) L. R. 2 Eq. 564; L. R. 2 Ch. 16.

⁽⁶⁾ (1877) 2 Q. B. D. 463.

⁽⁷⁾ (1867) L. R. 4 Eq. 189.

⁽⁸⁾ (1866) L. R. 2 Eq. 554.

⁽⁹⁾ (1867) L. R. 5 Eq. 193.

⁽¹⁰⁾ (1866) L. R. 3 Eq. 77.

if the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company, or if default is made or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company or the Company itself, may make an application for the rectification of the register.

Cases in which an application may be made concern, therefore, the acts or omissions of the Company keeping the register. In the case of an omission appearing by reason of the fact of a person having ceased to be a member not being entered in the register, it is necessary to show that default has been made or unnecessary delay has taken place on the part of the Company keeping the register. In all other cases, it is enough to show that the name of some person is fraudulently or without sufficient cause entered in, or omitted from, the register kept by the Company. Thus the evidence in every case must be directed to the acts or omissions of the Company.

In the present case, the grievance is that the applicant, having sold his shares to the opponents on the summonses before the order for winding up was made, has not been entered on the register as having ceased to be a member and it would, therefore, seem that it is necessary to show default or unnecessary delay in entering that fact in the register on the part of the Company. But even if we assume that, as argued on behalf of the applicant, the case may be treated as a case of omission from the register of a person who is not complaining of the omission, still an absence of sufficient cause has to be shown, and we are of opinion that upon the evidence, no absence of sufficient cause, no default and no unnecessary delay is proved.

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For these reasons we think that the learned Judge was right in the order passed by him which we now affirm and we dismiss the appeal with costs.

Attorneys for appellant : Messrs. *Payne & Co.*

Attorneys for respondent No. 1 : Messrs. *Dhanjishah & Batliwala.*

Attorneys for respondents Nos. 2, 3, 4 : Messrs. *Bhai-shankar Kanga & Girdharlal.*

Attorneys for respondent No. 5 : Messrs. *Little & Co.*

Appeal dismissed.

G. G. N.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Hayward.

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August 18.

HARKISANDAS SHIVLAL AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS
v. CHHAGANLAL NARSIDAS AND OTHERS (ORIGINAL DEFENDANTS),
RESPONDENTS.*

Civil Procedure Code (Act V of 1908), Order I, rule 8—Suit by plaintiffs as representing the section of a caste to take account and to recover moneys belonging to the section—Meeting not properly convened—Suit opposed by numerous members of the section—Suit as representing the plaintiffs supported by a large number of the members—Representative suit not maintainable.

The caste of the Dasa Lad Baniyas of Broach was divided into two sections, known as the Mojumpurias and Sheherias. The accounts and the funds of each section were separately kept by defendant No. 1, who was the headman of the whole caste. The plaintiffs were authorised to bring the present suit, at a meeting at the Mojumpuria section held on the 28th April 1909. It appeared that the meeting was irregularly convened. The plaintiffs brought the present suit, under Order I, Rule 8 of the Civil Procedure Code, to take accounts of the funds belonging to the Mojumpuria section from defendant

* Second Appeal No. 544 of 1913.