ORIGINAL CIVIL.

Before Mr. Justice Marten.

PURSHOTTAMDAS HARKISONDAS (PLAINTIFF) *v.* THE CENTRAL INDIA SPINNING, WEAVING AND MANUFACTURING COMPANY, LIMITED (DEFENDANTS).*

1917. *June* 21.

Company—Fixed preference and ordinary shareholders—Preference shareholders liable to pay income-tax on their dividends unless otherwise provided—The Income-Tax Act (II of 1886), sections 4, 11, 12, 49, Schedule II, Part II—The Income-Tax Amendment Act (V of 1916)—The English Income-Tax Act of 1842, sections 40, 54, 100.

As between fixed preference and ordinary shareholders in a joint stock company the former are not entitled to have their preference dividends paid free of income-tax in a case where there are no express words to that effect in the contract regulating the rights of parties.

Under the Indian Acts as well as the English Acts the income-tax is in effect paid on behalf of the shareholder by the company. In a narrow technical sense it may be said that the company being a separate legal entity the net profits belong to the company and not to the shareholders, at any rate until a dividend has been actually declared. But in effect these net profits do belong to the shareholders. If therefore any sum has to be paid out of those net profits to the Crown for tax, in effect it is the shareholders who have to pay. The provisions of the Income-Tax Act as to assessment on and payment by the company are in effect mere machinery for the collection of the tax, and the matter is made much clearer if one sweeps away this machinery and regards the matter as between the Crown and the subject.

Attorney-General v. *Ashton Gas Company*[1], referred to.

THE plaintiff, Purshottamdas Harkisondas, was the registered shareholder of six preference shares in the Central India Spinning, Weaving and Manufacturing Company, Limited.

The said company was incorporated in 1874 with an original capital of fifteen lacs only divided into 3,000 ordinary shares of Rs. 500 each. The capital of the

* O. C. J. Suit No. 930 of 1916.

(1) [1904] 2 Ch. 621.

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company was increased from time to time, and at the beginning of 1912 consisted of Rs. 46,87,500, part of which consisted of shares of Rs. 500 each and part of shares of Rs. 250 each. By a special Resolution passed at meetings held on the 5th of September and 3rd of October 1912, the capital was increased to Rs. 96,87,500 by the issue of 10,000 five per cent. cumulative preference shares of the value of Rs. 500 each. The Resolution defined the rights of the preference shareholders, and the Articles of Association were accordingly altered.

Among the Articles of Association of the Company the following were material:—

"3. The capital of the company now consists of Rs. 96,87,500 subject to be increased in accordance with the regulations of the company and the legislative provisions for the time being in force in this behalf.

"3A. The said capital is divided into 10,000 five per cent. cumulative preference shares of Rs. 500 each, 3,000 shares of Rs. 500 each, and 12,750 shares of Rs. 250 each.

"3B. The said preference shares shall confer on the holders thereof the right, out of the net profits of the company which it shall be determined to distribute in dividends, to a fixed cumulative preferential dividend at the rate of five per cent. per annum on the capital amount for the time being paid up thereon respectively to be calculated from the date of allotment of the said shares and to be payable half-yearly, and also the right in a winding up of the company to payment of the capital amount and all arrears of interest, whether declared or undeclared, up to the commencement of such winding up in priority to the existing shares of the company, but shall not confer any further right to participate in profits or any surplus assets.

"116. Previously to the Directors' recommending any dividend or bonus they may set aside out of the profits of the company such sums as they think proper to the credit of a Reserve Fund, a Depreciation and Renewal Fund, and an Insurance Fund, respectively, and may invest the amounts standing to the credit of the said respective funds for the time being in securities guaranteed by Government or of the Bombay Municipality, Bombay Port Trust or Bombay Improvement Trust as they shall think fit. Irrespective of the Insurance Fund above referred to, the Directors may at their discretion insure the mill and property of the company with local and foreign Insurance Companies to such extent as they may deem expedient."

Since the issue of the preference shares the company declared six half-yearly dividends and in each case paid those dividends less income-tax. The last of these dividends, namely, that due in May 1916 became due after the passing of the Act of 1916. All the other five dividends became due prior to the Act which came into force on the 1st of April 1916. The plaintiff complained that he had been underpaid in respect of the dividends to the extent of Rs. 11-4-9.

The plaintiff therefore filed the present suit on behalf of himself and all other preference shareholders to have it declared that the preference shareholders were entitled out of the net profits of the company to a payment of a fixed cumulative preferential dividend at the rate of five per cent. per annum without any deduction for income-tax. The plaintiff prayed that the company be ordered to refund the amounts deducted in respect of the income-tax. The main contention on which the plaintiff rested his case was that under the Indian Income-Tax Acts the shareholder was under no liability for the tax, that the company paid the tax on its own account and not on behalf of the shareholder and that the fund actually distributable was the fund on which all tax had been paid. The defendant company contended *inter alia* that in the absence of express provision in the Articles of Association that the preferential dividend was to be paid free of income-tax, the income-tax was rightly deducted from the preferential dividend, inasmuch as the payment of the tax by the company was in effect on behalf of all shareholders including the holders of preference shares.

Kanga and *Tarapurvala*, for the plaintiff.

Strangman (Advocate-General) and *Setalvad*, for the defendants.

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MARTEN, J.—This case raises an interesting point on which there is apparently no authority in India, namely, whether, as between fixed preference and ordinary shareholders, the former are entitled to have their preference dividends paid free of income-tax in a case where there are no express words to that effect in the contract regulating the rights of the parties. The Crown is not affected. The full tax on the net profits of the defendant company has admittedly been paid, and the sole question is whether the preference shareholders can escape liability for their proportion of the tax. Now, if this case arose in England, the matter would be quite clear. The preference shareholders would undoubtedly have to bear the income-tax on their respective shares. If authority is needed for that proposition, I may refer to *Attorney-General* v. *Ashton Gas Company*[1]. That was a case where the special Act under which the company was incorporated provided that the profits of the company to be divided amongst the shareholders in any year should not exceed the rate of 10 per cent. per annum on the ordinary share capital, and the question which arose was whether that 10 per cent. included the income-tax. It was held in all the Courts that it did and that the company had been wrong in paying the shareholders the 10 per cent. free of income-tax.

There in the Court of Appeal[2] Lord Justice Romer said as follows:—

"I must say, speaking for myself, that the case appears to me to be a reasonably clear one on principle. If such a company as we have to deal with pays income-tax on its profits, the income-tax, as has been pointed out, is payable out of the profits, and is part of the profits; and if the profits, after deducting the income-tax, have subsequently to be distributed amongst the members of the company, that income-tax is not payable again by those

[1] [1904] 2 Ch. 621; [1906] A. C. 10.

[2] [1904] 2 Ch. 621 at p. 629.

members so far as they receive their share of the profits, because the income tax is to be taken as having been paid out of their profits, and on their behalf. If, for example, a company such as this had preference shareholders as well as ordinary shareholders, and the preference shareholders were only entitled to receive out of the profits a fixed sum, say 5 per cent.; then, when income-tax is paid by the company out of its profits, the company must be treated in respect of so much of the profits as is going to the preference shareholders as having paid their income-tax in respect of their 5 per cent. Accordingly, to my mind, it is clear on principle in such a case that there ought to be deducted from the dividend warrants payable to the preference shareholders the income-tax on the 5 per cent. which had been previously paid on their behalf by the company. The same principle, of course, applies to the shareholders in the present case who are restricted by the provision of the Act, so that they are only to share a limited amount of the profits."

This decision was affirmed by the House of Lords and I may refer in particular to the speech of Lord Halsbury[1].

But it has been urged by Mr. Kanga in his forcible argument for the plaintiff that the provisions of the English Income-Tax Acts are entirely different from the Indian Income-Tax Acts, and that the liability in England of the preference shareholders for the payment of the tax rests on the fact that the company is taken to pay on their behalf and that that is the ground of the decision in the *Ashton Gas Company's case*[2] which I have referred to. He argues that under the Indian Income-Tax Acts this is not so; that the shareholder is under no liability for the tax; and that the company pays the tax on its own account and not on behalf of the shareholder. Consequently, he says, the fund actually distributable is the fund on which all tax has been paid, and there is no reason therefore why the preference shareholders should not be paid their 5 per cent. without any deduction.

Before turning to the Acts, I should deal shortly with the facts, which are not in dispute. The company

(1) [1906] A. C. 10 at p. 11. (2) [1906] A. C. 10.

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was incorporated in 1874 with an original capital of fifteen lacs divided into 3,000 shares of Rs. 500 each. The capital was from time to time increased and at the beginning of 1912 consisted of Rs. 46,87,500, part of which capital consisted of shares of Rs. 500 each and part of it of shares of Rs. 250 each. By a special Resolution passed at meetings held on the 5th of September and 3rd of October 1912 the capital was increased to Rs. 96,87,500 by the issue of 10,000 5 per cent. cumulative preference shares of the nominal value of Rs. 500 each. The Resolution defined the rights of the preference shareholders, and at the same time the Articles of Association were altered. Article 3 (*b*) which is in similar terms to the Resolution provided as follows:—

> "The said preference shares shall confer on the holders thereof the right, out of the net profits of the company which it shall be determined to distribute in dividends, to a fixed cumulative preferential dividend at the rate of 5 per cent. per annum on the capital amount for the time being paid up thereon, respectively......"

Then after dealing with certain rights in the winding up, the Article concluded: "but shall not confer any further right to participate in profits or any surplus assets."

It will be seen that this Article 3 (*b*) does not expressly make the preference dividends free of income-tax as one would have expected if that had been the intention of the parties. Moreover it appears from the Circular (Exhibit A) that this issue was underwritten, and one would not expect the underwriters to allow such a point to be left open to doubt if the real agreement was what the plaintiff says it was. It is not contended that in India such an agreement would be illegal or void—I mean an agreement that after payment of tax, the balance of the net profits should be distributable in such a way that the preference shareholders

get 5 per cent. free from any deduction for tax. It is said in a note to Palmer's Company Precedents, 11th edition, Vol. I, p. 765, that such an agreement would in England be void having regard to sections 102 and 103 of the Income Tax Act, 1842, but the accuracy of that note may be doubted in view of the recent decision of the House of Lords in *Brooke* v. *Price*[1].

Returning to the facts, the plaintiff is a preference shareholder in the defendant company suing on behalf of himself and all other preference shareholders. His original holding was three preference shares but was subsequently increased to six. The company have declared six half-yearly dividends on the preference shares and in each case they have paid those dividends less income-tax. The result is that the plaintiff claims that he has been underpaid in respect of those dividends to the extent of Rs. 11-4-9 as set out in the particulars (Exhibit B) to the plaint, and he claims amongst other things payment of that sum. The last of those dividends, namely, that due in May 1916 became due after the passing of the Act of 1916. The other five dividends all became due prior to the Act which came into force on the 1st of April 1916. The reports and balance-sheets of the company for the four years from 1912 to 1916 have been put in but for the moment I will not deal with them. Similarly, for the moment I will not deal with the words in Article 3 (*b*) of the Articles of Association "which it shall be determined to distribute in dividends" but will assume in the first instance that that Article referred to net profits only.

Now, turning to the Acts, I mean the English Income Tax Acts and the Indian Income Tax Acts, one finds these points of similarity. In both cases it is the company by its proper officer who has to make a return of the profits of the company. It is the company which

(1) [1917] A. C. 115.

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is assessed on those profits and it is the company which is obliged to pay and does pay the tax on those profits. All therefore that the shareholder can get is the balance of the profits after paying the tax. The above will be seen by comparing sections 4, 11 and 12 and Schedule II, Part II of the Indian Income Tax Act, 1886, with sections 40, 54 and 100 of the English Income Tax Act of 1842.

The alleged points of dissimilarity are that there is no express power under the Indian Acts for the company to deduct the tax on the dividends as is contained in section 54 of the English Act. Further, and this is especially important, that under section 5 (1) (*f*) of the 1886 Act, the shareholder is expressly exempted from liability for the tax on any income which he enjoys as a member of the company provided the company is liable to the tax. And, thirdly, that until the Act of 1916 no right of exemption was given to the shareholder however poor and on the other hand it was the company which was entitled to exemption under section 5 (1) (*j*) of the 1886 Act in cases where its income from all sources was less than a particular sum, that sum being under the 1886 Act Rs. 500 per annum and under the amending Act of 1903 Rs. 1,000 per annum.

Now as regards the first point, no doubt this express power of deduction given by the English Acts was largely relied on in the *Ashton Gas Campany's case*(1) in all the Courts as showing that the company paid the dividend on behalf of the shareholder. But the answer made here is that that express power is really unnecessary and for this reason. Obviously the shareholder can only get the balance of the net profits after the Crown has been paid the income-tax. It does not

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therefore matter to him whether the company distributes the available balance by in form declaring a higher dividend, less tax or by declaring a lower dividend, free of tax. In either event, all that the shareholder gets is precisely the same amount in actual cash. Clause 49 of the Indian Income Tax Act of 1886 was not referred to in argument. That section provides that "every person ... paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the ... payment thereof." If the words "income belonging to another person" include income referred to in clause 5 (1) (*f*), viz., "income which a person enjoys as a member of a company", then the company would be expressly indemnified for the payment of tax in the present case. In that event there would be no substantial difference between the Indian and English Acts on the important point as to the company's right of deduction or indemnity and it would be very difficult for the plaintiff to distinguish the *Ashton Gas Company's case*[1]. As, however, I have heard no argument on clause 49 and have arrived at my decision irrespective of that clause, I think it safer to express no opinion on it and leave the point open for discussion if necessary on some future occasion.

As regards the second point, the answer given by the defendant company was that the reason for clause 5 (1) (*f*) is merely to prevent the shareholder being in effect taxed twice over, although in terms the clause may go further than was intended or was necessary. Then as regards the third point, viz., the exemption, it is admitted by the defendant company that the word "person" in clause 5 (1) (*f*) includes a company as was subsequently made clear by the amendment effected by the Act of 1916, but the answer given is that the Indian Acts

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decided to give the company exemption rather than an individual shareholder and that this policy was subsequently modified by the Act of 1916. Further it is forcibly urged on behalf of the defendants that having regard to the use of the word "refund" in clauses 6 and 7 and in the proviso to Part II of the Second Schedule of the Act of 1916, the Indian Legislature must have contemplated that the tax was paid if not by, at any rate on behalf of, the shareholder, for otherwise there could be no "refund" to him.

These, shortly, are the main points in dispute which I have to decide. In my judgment, the true view is that under the Indian Acts as well as the English Acts the income tax is in effect paid on behalf of the shareholder. I think one must look at this matter from a broad point of view. In a narrow technical sense it may be said that the company being a separate legal entity the net profits belong to the company and not to the shareholders, at any rate until a dividend has been actually declared. But in effect these net profits do belong to the shareholders. If therefore any sum has to be paid out of those net profits to the Crown for tax, in effect, it is the shareholders who have to pay. The provisions of the Income Tax Acts as to assessment on and payment by the company are in effect mere machinery for the collection of the tax, and, as was said by Lord Halsbury in the *Ashton Gas Company's case*[1] the matter is made much clearer if one sweeps away this machinery and regards the matter as between the Crown and its subject.

If, then, as I think is the case, it is the shareholders who have in effect to bear the tax, how one ought to deal with a case where the balance of the fund after paying the tax is distributable partly amongst fixed

(1) [1906] A. C. 10.

preference shareholders and partly amongst ordinary shareholders. We have in such a case a fund, which subject to tax consists of £ X + £ Y of which £ X passes to the preference shareholders and £ Y to the ordinary shareholders. But the whole fund, namely, £X+ £ Y is subject to the common burden of income tax. How then must it be borne? Surely the fair way is to apportion the gross amount of the tax between £ X and £ Y according to their respective values. In this way each shareholder, preference and ordinary alike, will bear his proportion of the tax. This would, I think, be the result supposing the case was one of a paramount charge on two properties, White-acre and Black-acre, which, subject to the charge, passes to two different owners, A and B. In such a case I think that in a Court of Equity A and B would have to bear this paramount charge in proportion to the values of their respective properties, White-acre and Black-acre (see *Flint* v. *Howard*[1]). This mode of apportionment is consistent with the Act itself, for Part II of the Second Schedule provides that the rate of tax is to be one anna in the rupee on the whole of the net profits made by the company. In other words, tax has to be paid in respect of every rupee of those profits and consequently it would seem fair that *prima facie* each such rupee should bear its own tax which is in effect carried out by the method of apportionment which I have suggested. This view receives additional support from the use of the word "refund" which I have already alluded to in the Amending Act of 1916.

As regards clause 5 (1) (*i*) of the 1886 Act I can well understand some such provision being inserted for the protection of the shareholder so as to make it quite clear that the tax should not be paid twice over, viz., first by the company and secondly by himself. But I

(1) [1893] 2 Ch. 54 at pp. 61, 73.

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do not think that this clause gets rid of the fact that in effect it is the shareholder who bears the tax, whatever his legal liability may be.

The exemption point I do not attach any substantial importance to. An exemption is after all a concession by the Legislature. Under the 1886 Act it thought fit to grant the exemption to the company, and to the company alone, and under the 1916 Act it has thought fit to grant an exemption to the shareholder also. But here again I do not think this seriously affects the question whether it is in effect the shareholder who bears the tax.

It was further urged before me by counsel for the plaintiff that the Indian Income Tax Act is really very similar to the new Excess Profits Tax in England and that there are two decisions of Mr. Justice Peterson, namely, *Collins* v. *Sedgwick*(1) and *In re Condran*(2) which go to show that this Excess Profits Tax is not paid on behalf of the shareholder and that consequently it must be deducted before you arrive at the net profits available for distribution amongst the shareholders. On the other hand there are decisions in *William Hollins & Co., Limited* v. *Paget*(3) and *Thomas* v. *Hamlyn & Co. (Limited)*(4) where a different result was arrived at in calculating the commissions to be paid on the net profits of a company or business. There Mr. Justice Eve in the one case and Mr. Justice Rowlatt in the other held in effect that Excess Profits Duty stands very much on the same footing as income-tax and ought not to be deducted before arriving at the profits on which such commission was to be calculated. I do not propose to discuss the Act under which the Excess Profits Duty was leviable, nor to enter on the question

(1) [1917] 1 Ch. 179.

(2) [1917] W. N. 137, (since reported [1917] 1 Ch. 639.)

(3) [1917] 1 Ch. 187.

(4) [1916] 33 T. L. R. 129 (since reported [1917] 1 K. B. 527).

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which of these somewhat conflicting decisions is to be preferred. I would only say this that under section 38, sub-section 1 of that Act there is an actual charge for the amount of the duty and that under section 35, sub-section (1) there is an express provision for deducting the amount of the Excess Profits Duty before arriving at the amount of the profits on which the income-tax is leviable. It is also questionable whether the differences between the income-tax and Excess Profits Duty, which Mr. Justice Peterson relies on in *Collins* v. *Sedgwick*[1], at page 186, exist, at any rate to the extent which the learned Judge relies on.

Apart, then, from the special words of Article 3 (*b*) I should have thought the defendant company in the present case was right in deducting the tax on the preference shares. That brings me to the remaining difficulty, namely, as to the wording of Article 3 (*b*) of the Articles of Association and the course actually adopted by the defendant company in its accounts. Now, it will be seen that in Article 3 (*b*) the duty is payable not merely out of the net profits of the company but "out of the net profits of the company which it shall be determined to distribute in dividends." If one turns to Article 116 of the Articles of Association it will be seen that previously to recommending any dividend the Directors have power to set aside out of the profits of the company such sums as they think proper to the credit of a Reserve Fund, a Depreciation and Renewal Fund and an Insurance Fund respectively. I can quite understand therefore the words "determined to distribute in dividends" being used in preference to the more usual phrase "profits available for distribution by way of dividend". But even the latter phrase is not strictly accurate. The net profits on

(1) [1917] 1 Ch. 179 at p. 186.

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which the tax has to be paid are not available for distribution in their entirety. The tax must be paid first and therefore strictly speaking it may be said that it is only the balance of the profits after paying tax and not the whole of the net profits which are available for distribution by way of dividends. The tax is, however, paid out of and is therefore part of the net profits of the company, and taking the view that I do, that in effect it is paid on behalf of the shareholders, I think the whole of the net profits may be said to be available for distribution by way of dividend, although in effect a portion, viz., income tax, goes to Government. This, indeed, is the view taken by Mr. Justice Sargant in *Johnston* v. *Chestergate Hat Manufacturing Company, Limited*[1], although no doubt the learned Judge got some help from section 54 of the Income Tax Act, 1842 in arriving at that conclusion. He also points out there that the company pays the tax to Government on an average of three years' profits, whereas the deduction made by the company in respect of the tax is made on the amount which is paid to the shareholder; and that although this matter would adjust itself over a long series of years, it does not follow that in any particular year the two payments would exactly balance each other.

Now, does it make any difference here that instead of the words "available for distribution" the words "which it shall be determined to distribute" are used? I think not. I do not mean to say that the ordinary shareholders may not, if they like, make a present of the tax to the preference shareholders, but I think that one should be very cautious in arriving at such a result merely from the date of actual payment of the tax or from the mode in which accountants or auditors have chosen to draw up their accounts and the manner in

(1) [1915] 2 Ch. 33

which they have been assented to and passed at the meetings. Taking for example the Report and Accounts for the 1st of July 1914 to the 30th of June 1915, (Exhibit C) (3) one finds on page 12 in the Revenue Account that income-tax has been paid amounting to Rs. 39,152-15-1 and I am told that this sum includes the tax on the preference shares. The balance of profits arrived at after paying this and other sums is shown at the foot of page 12 and amounts to Rs. 11.54,826-6-7. This balance profit is then brought in to the Profit and Loss Appropriation Account on pp. 14 and 15 and after providing for, amongst other things, Depreciation and Renewal Fund Account leaves a balance available for dividends of Rs. 7,60,373-10-1. I turn next to the Directors' Report at page 5. They first add together the above balance profit of Rs. 11,54,826-6-7 and the balance brought forward from the last account, namely, Rs. 3,80,297-3-6 making together a total of Rs. 15,35,123-10-1. This total of Rs. 15,35,123-10-1 the Directors deal with as follows. They report that they have paid an *interim* dividend of *inter alia* Rs. 12-3-0 net on the preference shares and that after carrying certain sums to Provident Fund Account, Depreciation and Renewal Fund Account and Office Recreation Room Fund Account they recommend payment of a final dividend due on the 5 per cent. preference shares for the period ended 30th June 1915 after deducting income-tax, at Rs. 12-3-0 per share and they further recommend a final dividend on the ordinary shares leaving a balance of Rs. 1,22,873-10-1 to be carried forward to the next account. This report does not state whether the *interim* dividend on the preference shares was paid less tax but it is common ground that it was so; that the gross amount payable was Rs. 12-8-0 and that the income-tax in respect of it was 5 annas, thus leaving the Rs. 12-3-0 per share mentioned in the report. I think it may also be taken as common ground

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that the dividends as recommended by the Directors were passed at the various meetings. At any rate it was admitted that these were the dividends actually paid and one must assume that they were paid in accordance with resolutions passed at the meetings.

Now the argument for the plaintiff is that on those facts the fund which is determined to distribute by way of dividend was a fund on which all tax had been paid and that consequently the preference shareholders were entitled to their 5 per cent. dividend in full. It is quite clear that the only dividend the Directors recommended or the shareholders passed was a dividend less tax in the case of the preference shareholders and I do not think that the accounts and declarations of dividend can be twisted so as to give a right to a dividend free of tax. The true view is, I think, this, viz., that it must be taken that the sum which the company determined to distribute by way of dividend included the tax on so much of the profits as, after setting aside certain sums for reserve and so on, belonged to and was distributable amongst the shareholders by way of dividend. I think, therefore, the plaintiff fails on that point.

Looking, therefore, at the case as a whole, I am of opinion that the company was right in deducting the tax and that accordingly the action fails and must be dismissed.

I accordingly answer the formal issues, viz., (1) whether the defendants rightly deducted the Income-tax in respect of (*a*) the first five dividends referred to in Exhibit B to the plaint and (*b*) the last dividend therein referred to; (2) whether the plaintiff is entitled to any and if so what declaration; and (3) general issue, as follows: (1) Yes. (2) No. (3) Action dismissed.

I will only add this, that I have no doubt that if a contrary result had been arrived at, the preference shareholders would be getting an advantage which they

never contemplated originally, and a variance would be created between the business practices in the two countries of India and England which has nothing to recommend it so far as I can see from the point of view of either fairness or common sense.

As regards the costs, there will, by arrangement between the parties, be no order as to costs.

Solicitors for plaintiff: Messrs. *Ardeshir Hormusji, Dinshaw & Co.*

Solicitors for defendants: Messrs. *Wadia, Gandhy and Co.*

Action dismissed.

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APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

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THE HONOURABLE RAO BAHADUR RAMANBHAI M. NILKANTH AND MR. SANKALCHAND BECHARDAS, OFFICIAL LIQUIDATORS OF THE KATHIAWAD AND AHMEDABAD BANKING CORPORATION, LIMITED, (IN LIQUIDATION) (ORIGINAL OPPONENTS) APPELLANTS *v.* GHASHIRAM LADLIPRASAD, (ORIGINAL APPLICANT) RESPONDENT.*

Indian Companies Act (VI of 1882), sections 45 and 58—Rectification of register of shareholders—Winding up—Contributory—Application for shares—Condition attached—Applicant unable to fulfill the condition—Applicant's liability as a contributory—Intention to become a member in prœsenti *or* in futuro.

A manager of a Banking Company represented to the petitioner that if the petitioner took 400 preference shares he would be appointed a cashier in a new branch of the company. In pursuance of this contract, the petitioner applied for 100 only of preference shares. He paid the deposit money and was entered on the register of shareholders. Subsequently he found himself unable to take up the remaining 300 shares, he was not appointed a cashier in the branch office and the contract was treated as cancelled by the Directors.

* First Appeal No. 108 of 1916.