Shiromani Sugar Mills Ltd. vs Debi Prasad on 20 February, 1950

Equivalent citations: AIR1950ALL508, AIR 1950 ALLAHABAD 508

JUDGMENT

Desai, J.

1. This and civil Revisions NOS. 122 to 154 of 1945 are applications in revision under Section 25, Small Cause Courts Act, against judgments passed by the Small Cause Court Judge, Gorakhpur, in suits filed by the Official Liquidator of the Shiromani Sugar Mills Limited, Khalilabad against a number of ex share-holders of the Shiromani Sugar Mills Ltd. for allotment, first call and second-call moneys. There were as many suits as there are revisions; they were all of similar nature and the same disputes were involved in all. They were consolidated by the learned Small Cause Court Judge and tried together. He delivered one judgment dismissing all the suits.

2. The Company which was a public limited Company was formed with a large number of objects, the first and most important object being :

> "to manufacture in India or abroad all kinds of sugar by up-to-date and latest scientific method and machinery, and for this purpose to erect and construct a factory or factories at one or several places in or outside India."

It was incorporated on 7th November 1933 on which date the Memorandum of Association and the Articles of Association were registered with the Registrar, Joint Stock Companies. The prospectus was published on 16th October 1933 and was registerd with the Registrar on 26th February 1934. On 24th November 1933, a meeting of the promoters of the Company unanimously elected the following persons as first Directors: (1) Pandit D. P. Pandey, (2) Pandit P. P. Pandey, (3) Pandit S. K. Pandey, (4) Chaudhri Bhagwati Prasad, (6) Mahant Vishwanath Bharthi, (6) Pandit Ganga Narain Tewari, (7) Thakur Saran Singh, (8) Dr. P. C. Bhattacharjee, (9) Mukut Behari Lal, (10) Pandit Tirath Raj Pandey, (11) Sahu Baldeo Prasad, (12) Abdul Qadir Khan, (13) R. D. Sharma, ex officio and (14 N. K. Varma.

3. The authorised capital of the Company was fixed at RS. 20,00,000 divided into Rs. 15,000 preferred shares of Rs. 100 each and RS. 50,000 ordinary shares of Rs. 10 each. The earned capital according to the prospectus was Rupees 16,00,000 divided into Rs. 12,000 preference shares and Rs. 40,000 ordinary shares. In most of these revisions we are concerned with only preference shares and I shall deal only with them. Out of Rs. 100, the price of a preference share, Rs. 20 were payable on application for the share, Rs. 30 were payable on the share being allotted and the balance of Rs. 60 was payable in such call or calls as might be decided by the Directors from time to time. Under Article 32 of the Articles of Association a share became liable to forfeiture if the call or instalment or allotment money was not paid by the share-holder within the fixed time. The business of the

Company was to be conducted by Managing Agents, subject to the control of the Directors and Messrs. Sharma, Varma and Company were the first Managing Agents. The maximum number of Directors fixed under Article 172 are 17. The qualification of a Director as fixed under Article 156 was "the holding of shares of Rs. 5,000 at least In the capital of the Company in his own name and right."

Article 157 provided that:

> "A Director may act as Director before acquiring his qualification but shall in any case acquire the game within two months from his appointment and unless he shall do so he shall be deemed to have agreed to take the said share from the Company and the same shall be forthwith allotted to him accordingly,"

The office of a Director was vacated under Article 168 on his ceasing to hold the required number of shares or stock to qualify him for office, or on his accepting any other office or place of profit under the Company. One fourth of the number of Directors were to retire every year by rotation though they were eligible for re-election. Four Directors formed a quorum for a meeting of the Directors. Article 131 laid down that:

> "All acts done by any committee of Directors or by any person acting as a Diretor shall, notwithstanding that it be afterwards discovered that there are some defects in appointments of any such directors or persons acting as aforesaid or that they or any of them are disqualified, be as valid as if every such perion have been duly appointed and was qualified to be a Director."

4. The defendants-opposite parties were all share-holders of the Company. Some of them did not pay even the allotment money and others did not pay the first and second call moneys. Consequently their shares were forfeited through resolutions passed by the Directors in three meetings held on 14th June 1939, 23rd July 1939 and 16th October 1939. An order for the winding up of the company was passed on 7th December 1941. The official liquidator then instituted the suits to recover the balance of the allotment and first and second-call moneys.

5. The suits were contested by the opposite parties. The grounds with which we are concerned in these applications were (1) that the original contract for the purchase of the shares was procured by the promoters of the Company by fraudulent misrepresentation, (2) that the promises held out to the opposite parties at the time of the purchase were not carried out by the Company and consequently the opposite parties were justified in not making further payment, (3) that the resolutions passed by the Directors allotting the shares to the opposite parties were invalid because the Directors voting for the resolutions had ceased to be Directors and (4) that the resolutions forfeiting the shares also were invalid for the same reason. The learned Judge upheld all these contentions of the opposite parties and dismissed the suits. In these applications the official liquidator challenges the learned Judge's findings on these four points.

6. As stated by Baggallay L. J. in In re Scottish Petroleum Co. (1893) 28 Ch. D. 413 at p. 430 : (49 L. T. 348) :

> "To constitute a binding contract to take-shares in a company when such contract is bated upon application and allotment, it is necessary that there should be an application by the intending share-holder, an allotment by the director of the company of the shares applied for, and a communication by the directors to the applicant of the fact of such allotment having been made."

The purchase of shares is governed by the same law as the purchase of goods. Every person who has agreed to become a share-holder of a company is liable to pay the price of the share in accordance with the Articles of Association. This proposition, "is subject to the application of the well-recognised rule in equity that a person who has been induced to enter into a contract by the fraudulent conduct of-those with whom he bag contracted is entitled to rescind such contract provided he does so within a reasonable time after his discovery of the fraud." (Baggallay L. J. , In re Scottish Petroleum Co., (1883) 23 Ch. D. 413 at p. 429 : (49 L. T. 348).) Sir G. J. Turner L. J. observed in In re Reese River Silver Mining Co., (1867) 2 Ch. A. 604 at page 609 :

> "If it can be shown that a material representation which is not true is contained in the prospectus, or in any document forming the foundation of the contract between the company and the share-holder, and the share holder comes within a reasonable time, and under proper circumstances, to be released from that contract, the Court are bound to relieve him from it, and to take his name off any list of share-holders."

7. The misrepresentation must be of a material fact, the share-holder must have been induced by it and he must plead and prove so. James L. J observed in Eaglesfield v. Marquis of Londonderry, (1877) 4 Ch. D. 693 at p. 709 : (35 L. T. 822) that the misrepresentation "must be a misrepresentation of a matter of fact." A share-holder, "cannot obtain relief without distinctly alleging and proving that the' particular statement was a material inducement to his purchasing his shares;"

> "the precise misrepresentation must be distinctly stated and also that it formed a material inducement to the plaintiff to take shares in the company:" (see Hallows v. Fernie, (1867-68) 3 Ch. A. 467 at p. 477 : (18 L. T. 340), per Lord Chelmsford L. C.).
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> In that case the plaintiff did not allege and prove that he "read the prospectus in a sense which Involved an untruth, that it led him into an erroneous belief of the existence of a certain stats of facts, and that this belief was a material inducement to him to become a purchaser of shares in the company,"

and the Lord Chancellor dismissed his suit. To adopt his Lordship's language "whatever may be the fair meaning of the prospectus, and even if the plaintiff's construction of it is correct, he can only be entitled to succeed secundum allegata et probata" (page 478)

8. The learned Judge has relied mainly upon one misrepresentation in the prospectus. It is the sentence "the Managing Agents with their friends, promoters and directors have already promised to subscribe share worth Rs. 6,00,000,"

> printed in red on the cover of the prospectus. The opposite parties did not specifically plead that it is a misrepresentation and that they were induced by it to purchase the shares. There is no proof, and of course there is no finding of the learned Judge, that the Managing Agents with their friends, promoters and directors had not promised to subscribe to shares worth Rs. 6,00,000. I do not know how this statement could be assailed as a misrepresentation of fact, The only fact asserted was of the existence of promise. Unless it were false, there was no misrepresentation of fact. It was not asserted that the Managing Agents, etc. had subscribed to shares worth Rs. 6,00,000. When it was said that they had only promised, it meant that they had not carried out their promise, otherwise the statement would have been that they had already subscribed to shares worth Rs. 6,00,000 Nobody should have been misled by this statement and nobody should have understood it to mean that, shares worth six lacs of rupees had already been-subscribed to. If the opposite parties misunderstood this statement to mean that the shares had' already been subscribed to and applied for shares under that misapprehension, they are to blame themselves and not the promoters of the company. In Smith's case: (1867)-2 Ch, A. 604) the prospectus contained the statement that the property which the company had contracted for consisted of 50 acres of land "containing several very valuable claims, some of which are in full operation, and making large daily returns." No claims were in full operation and the statement to the contrary was false. But it was based on a report received and honestly believed by the Directors. Sir G. J. Turner L. J. held that it was a misrepresentation of fact and observed at page 611:
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> "If the company had confined themselves to saying 'we have received reports from which we believe and have reason to believe, that these mines are in full operation, and are making daily large returns,' it might, and no doubt would, have been very difficult for Mr. Smith to be relieved from the contract, but the company, instead of thus referring to the information' received, stated the circumstances as facts."

What the directors could have said in that case to avoid their liability was stated by the directors; in the present case. In Hallows v. Fernie: (1867-3 Ch. a. 467 : 18 L. T. 340) the prospectus contained statements that the company would commence operations with six screw steamships of 20,000 tons and 300 h. p., each and having capacity of 2,000 tons of cargo and that the steamers were guaranteed to steam 10 knots and being full rigged as clipper sailing ships were calculated to perform the voyage regularly from F to R in 25 days. Actually no steamships were in possession of the company when the prospectus was issued and it had not even entered into any contract for obtaining them. So it was contended that the statements were misrepresentations of fact, but the contention was overruled. Lord Chelmsford L. C. held that the prospectus did not announce to the public in clear and unequivocal language that the promoters of the company actually possessed, or had contracted for the possession of 6 ships of the description mentioned. His "Lordship observed at

p. 475 :

> "There is a material distinction between the employment of words in a prospectus which can bear only one meaning and of those which are equivocal, and which different persons may interprets differently. In the latter case no prudent person would act upon his own construction without some inquiry. In construing a prospectus, the preliminary character of the document must always be taken Into consideration. Every one knows that it Is intended to usher a company into existence, and not to describe its actual formation; no one is surprised to find that a future sense must be given to words in the past or present tense which it contains".

His Lordship further observed at p. 476 :

> "After the elaborate examination of this first part of the prospectus in the argument before me, its meaning cannot be regarded as so entirely free from doubt, that a person has a right, without inquiry, and acting entirely upon his own views of its proper construction, to purchase shares in the company, and then complain that he has been deceived. Because, if the words are susceptible of different meanings, he is deceived not by the words, but by his construction of them."

9. When there is absence of proof that the Managing Agents, etc., had not made the promise, the existence of the promise is not falsified by the breaking of it. The Managing Agents, etc. might not have kept their promise, but the opposite parties are not entitled to say that they were misled by their promising. Every document, as against its author, must be read in the sense which it was intended to convey. As observed by Lord Chelmsford in Peek v. Gurney, (1873) 6 H. L. 877 at p. 886 : (43 L. J. Ch, 19) a prospectus may contain statements, which are perhaps literally true, yet really false in the sense in which the promoters should know, they would be understood by the public. The promoters in the present case could not possibly have intended the impugned statement in the prospectus to mean that shares worth Rs. 6,00,000 had already been subscribed to. Even if it amounted to misrepresentation, there is no proof that it induced the opposite parties to buy the shares. The learned Judge has mentioned that the Directors had not paid the application money for the qualification shares. This is immaterial. The Directors had two months within which to acquire the qualification shares. If their names were mentioned in the prospectus without their having acquired the qualifications shares, it does not mean that it contained a misrepresentation of fact, Even if the Directors did not acquire the qualification shares within two months, Article 157 of the Articles of Association forced the shares upon them. It is stated in the prospectus that "our shareholders will be highly and satisfactorily benefited by way of dividend.'

10. There is also the evidence of a Director to the effect that the shareholders were told that the company would start its work of producing sugar very soon. These are not representations of fact. Some amount of puffing must be allowed in a prospectus; it must not amount to a misrepresentation of fact. It is stated in Palmer's Company Law, 19th Edition, p. 347 :

> "The statement that something will be done is not a statement of an existing fact so much as a contract or promise. It may, however, imply the existence of facts which are non-existent, or it may be material term in the contract".

11. The statements in question do not imply the existence of facts which were really nonexistent and there is no evidence that they formed a material term in the contract.

12. The learned Special Judge has taken notice of certain non-disclosures in the prospectus. Under Section 93, Companies Act a prospectus must state the number of shares fixed by the Articles as the qualification of a Director, the names and addresses of the vendors of any property purchased or acquired by the company, and the debts of, and parties to, every material contract. The prospectus does not contain this information. But there is no penalty prescribed in the Act for non-compliance with the provisions of Section 93. When the non-compliance involves misstatement of a material fact, there will, of course, be a right of rescission under the general law. But otherwise the omission of any of the particulars will not per se entitle a shareholder to rescission of his contract to take shares. It will not do for promoters of a company to plead that everything which is stated in the prospectus is liter-rally true; they must be able to meet the objection, "not that it does not state the truth as far as it goes, but that it conceals most material facts with which the public ought to have been made acquainted, the very concealment of which gives to the truth which is told the character of falsehood"; see Oakes v. Turquand, (1867) 2 H. L. 325 at p. 342 : (36 L. J. Ch. 949) per Lord Chelmsford L. C. "Half a truth is no better than a downright falsehood"; Gluckstein v. Barnes, (1900) A. C. 240 at p. 250.

According to Peek v. Gurney, (1873) 6 H. L. 377 : (43 L. J. Ch. 19), if there is such a partial and fragmentary statement of fact, as that the withholding of that which is not stated makes that which is stated absolutely false, it would form ground for an action for misrepresentation. In Rex v. Kylsant. (1932) 1 K. B. 442 : (101 L. J. K. B. 97) Avory, J. held the prospectus to be false because--

> "The falsehood in this case consisted in putting before intending investors, as material on which they could exercise their judgment as to the position of the company, figures which apparently disclosed the existing position, but in fact hit it" (p. 448).
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> Judged according to these authorities, the omissions in the present case do not amount to a misrepresentation; what is left out does not make what is stated false.

13. The learned Judge has gone out of his way In taking into consideration the various acts of breach of rules; if the managing directors and other directors committed any breach of rules, the shareholders may have other remedy against them but not that of rescinding the contract of purchase of shares. They might have acted dishonestly and inefficiently and filed false declarations before the Registrar, but even that would not entitle the share-holders to rescind their contract. The learned Judge has observed that on account of these breaches and acts of dishonesty and inefficiency, the share-holders were justified in withholding further payment of their allotment and call moneys. He has not quoted any authority in support of his view. So long as the contract of

purchase of shares is not rescinded, the liability of a share-holder to pay their price remains. Apart from the right to rescind the contract of purchase of shares, a share-holder has no right to withhold payment lot the price.

14. A share-holder's contract to purchase shares is only voidable, and not void on account of misrepresentation in the prospectus: Oakes v. Turquand (1867 2 H. L. 325 : 86 L. J. Ch. 949), In re Scottich Petroleum Co., (1883-23 Ch. D. 413 : 49 L. T. 348) and Tennent v. The City of Glasgow Bank, (1879) 4 A. C. 615. This means that the contract is valid till rescinded. But a share-holder has not unlimited time within which to rescind the contract; he must rescind it promptly, that is within reasonable time of his becoming aware of the fraud giving him the right to rescind. In Kincaid's ease, In re Russian Iron Works Co. ; (1867) 2 Ch. a. 412 at p. 426, Lord Cairns L. J., considered delay of three months as fatal to a claim for rescission. The reason' as given in the connected Lawrence's case at page 424, is :

> "No attempt at repudiation took place for upwards of four months, and during this time Mr. Lawrence must be taken, in my opinion, to have known, not merely that his name was on the register, and that he was so held out to the world as a share-holder in and member of the company but also ..."

15. In Smith's case, (1867-2 Ch. A. 604), he had notice on 13th December 1865 that the property which the company had contracted to purchase was almost valueless, he received detailed information about it on 19th January 1866, he filed his bill to rescind the contract on 6th February 1866, and Sir C. J. Turner L. J., held that he had come with promptitude, observing that "it time were to be taken as running against him from 30th December 1865, he possibly might be considered to have come too late."

16. In In re Scottish Petroleum Co., (1883-23 Ch. D. 413 : 49 L. I. 348), eighteen mouths' delay was held to be fatal. The reason why a share-holder must be prompt in rescinding the contract is that the register of share-holder is to be the creditors' guarantee, showing them to whom and to what they have to trust. A shareholder knowing that he was induced by fraud to enter into the contract of purchase of shares, cannot lie by, let his name remain in the register and let third parties enter into contracts with the company on the faith of the register. In In re New Zealand Banking Corporation, Sewell's case, (1868) 3 Ch, A. 131 at p. 138: (16 W. R. 381), Lord Cairns L. J. said :

> "It appears to me that not having done so, and being aware that he was held out to the public as the holder of twenty three shares, it is too late for him months or years afterwards to enter into that question."

17. Even repudiation of shares, without taking active steps, is insufficient because the contract to take shares stands on a different footing from another contract. Fry L. J, stated in In re Scottish Petroleum Co., (1883-23 Ch. D. 413 at p. 438 : (49 L. T. 348):

> "As regards such contracts the Legislature has interposed, and has provided that they shall be made known in a particular way to shareholders and creditors; notice of

> them is given to the world. Now the general principle is that no contract can be rescinded so as to affect rights acquired bona fide by third parties under it. It is true that the creditors and the other shareholders have not acquired direct interest under the contract, but they have acquired an indirect interest."

The case of a Joint Stock Company is slightly different because there "while the Company is a going concern, no creditor has any specific right to retain the individual liability of any particular shareholders."

18. It is laid down in Tennent v. City of Glasgow Bank, (1879-4 A. C. 615), that a shareholder of a joint stock company can throw back his shares upon the company at any time so long as it is a going concern. But when a joint stock company becomes insolvent and stops payment, a wholly different state of things arises and the shareholder's right to throw back shares is lost.

19. In the present case, the shares were allotted to the opposite parties in 1934 and they have allowed their names to remain in the register of shareholders. They have taken absolutely no active steps to avoid the contract. They gave no indication of their intention to avoid the contract at any time; the earliest intention that they gave is through their written statements in the suit, It has been found by the learned Civil Judge that the assets of the company were in a very bad state from the very beginning. Sugar industry was a prosperous industry and this company could not start any business for five years. The directors and managing directors were inefficient and guilty of breaches of rules; Managing directors had to be changed repeatedly and a stage arrived when nobody was prepared to become the managing director and the office had to be thrust upon a person who had already proved himself unfit. No dividends were at all granted and general and statutory meetings were not held as frequently as required under the Articles. All this state of affairs could not have remained unknown to the shareholders and we are not dealing with one or two shareholders but a very large number of them. Even when calls were made in 1936 and 1937 they did not repudiate the shares. I have, therefore, no doubt that they have lost their right to rescind the contract by their laches.

20. In addition to the laches, the winding up of the company raises another bar in the way of the opposite parties to repudiate their shares. The law is that a share-holder cannot be relieved from his shares after a winding up application; Kent v. Freehold Land and Brick-making Co., (1868) 3 Ch A. 493 : (37 L. J. Ch. 653), In re Scottish Petroleum Co., (1883-23 Ch. D. 413 : 47 L. T. 348), Tennet v. City of Glasgow Bank, (1879-4 A. C. 615) and Hirji Khetsey v. Indian Specie Bank Ltd., A. I. R. (2) 1915 Bom. 27 : (27 I. C. 505). Sometime must be allowed to a shareholder when an investigation is necessary as laid down in Smith's case: (1867-2 Ch. A. 604) and In re Scottish Petroleum Co. (1883-23 Ch. D. 413 : 49 L. T. 348). If a shareholder has started active proceedings to be relieved of his shares, the passing of a winding up order during their pendency would not prevent his getting the relief. The reason why a shareholder cannot throw back his shares upon the Company after winding up is that rights of third parties have intervened and, to adopt the language of Baggallay L. J. in In re Scottish Petroleum Co., (1883-23 Ch. D. 413 at p. 429 : (49 L. T. 348), "Equities which would be sufficient as between the shareholder and the company cannot be set up as against the creditors or co-contributories,"

21. When the Legislature has provided the shareholders' register as the means of enabling persons dealing with the Company to know to whom and to what they had to trust, it would be no answer to a creditor that the shareholder sought to be charged had been induced by fraud to become a shareholder just as it would be no answer to creditor that a partner sought to be charged had been induced by fraud to become one; see Oakes v. Turquand (1867-2 H. L. 325) at p. 367 : (36 L. J. Ch. 949).

> "The liability of the shareholders is not under a contract with the creditors, but it is a statutable liability under which the creditors have a right which attaches upon the shareholders to compel them to contribute to the extent of their shares towards the payment of the debts of Company;"

this is what Lord Chelmsford L. C., said in the same case at page 350.

Lord Cranworth, agreeing with the Lord Chancellor, said at page 363 that:

> "The winding up is but a mode of enforcing payment. It closely resembles a bankruptcy, and a bankruptcy has been called, not improperly, a statutable execution for the benefit of all creditors."

22. Certain dicta of Lord Cairns L. J. in Smith's case (1867) 2 Ch, A. 604) may suggest that his Lordship did not consider winding up as a bar to granting relief to a shareholder. His Lordship was of the view that if the shareholder went to the Court with promptitude to have the fraud redressed, the fast that the interest of creditors was involved in the winding up did not alter the matter and, "the question must be disposed of as if it were to be disposed of upon the bill at the time when the bill was filed and before any winding up, in which case the plaintiff would be entitled to the relief prayed by the bill, p. (617)."

There the shareholder had gone to the Court with promptitude and before the winding up application was filed. What his Lordship said cannot be said to apply even when a share-holder comes to Court after a winding up application has been filed. Smith's case, (1867-2 Ch. a. 604) went up before the House of Lords, There the question was decided merely on the ground that there was no delay and that the subsequent filing of the winding up application did not disentitle him to the relief sought, Their Lordships did not say anything about Lord Cairns' dicta. In Hansraj Gupta v. N. P. Asthana, 60 I. A. 1: (A. I. R. (19) 1932 P. C. 240), the Judicial Committee laid down that if a person is on the share-holders' register with his knowledge and consent at the commencement of the winding up, the invalidity under Section 105, Companies Act, 1913, of the contract in pursuance of which he applied for, and was allotted shares is not a ground for removing his name from the list of contributories because after the winding up his liability in respect of the shares arises ex lege and not ex contractu. Therefore, I hold that the right of the opposite parties to avoid the contract of purchase of the shares is barred not only by the enormous delay that has taken place but also by the winding up of the company.

23. But the case of the opposite parties does not rest only upon avoiding the contract of purchase of shares ; they have another string to their bow which is that there was no valid contract at all. The argument is that the Directors who voted for the allotment of the shares to them were disqualified to act as Directors, that the allotment was ultra vires and that consequently no contract to purchase the shares came into being at all, I have given the names of the original Directors ; they were appointed as such on 24th November 1933. Under the Articles of Association, they were bound to acquire shares of the minimum value of Rs. 5,000 within two months that is by 24th January 1934. If they failed to acquire the shares, they were to be deemed to have acquired them. They were, therefore, bound to pay the application and allotment moneys by 24th January 1931 and also the first and the second call moneys. Directors Nos. 2, 4, 5 and 8 did not pay even the application money in full by 24th January 1934; Director No. 4, as a matter of fact, did not pay any application money. Directors Nos. 1 to 9 and 11 and 12 did not pay the full allotment money in time ; Directors Nos. 4 and 12 did not pay any allotment money. The resolution for the first call was passed on 36th November 1936 and the call-money was to be paid within six months, that is by 26th May 1937. Directors Nos. 4, 5, 8 and 11 to 14 did not pay the first call-money at all and Directors NO. 7 did not pay it in time. The resolution for the second-call money was passed on 5th July 1937 ; though the prescribed period for time was six months, the resolution allowed a longer period which was illegal. Still Directors NOS. 1, 5, 8 and 11 to 14 did not pay the call-money at all and Directors Nos. l, 2 and 7 did not pay it within time. Thus all the Directors except Directors NOS 10, 13 and 14 ceased to be Directors under Section 85, Companies Act, on 24th January 1931 and Directors Nos. 13 and 14 ceased to be Directors on 26th May 1937. In 1934 only three persons were qualified to act as Directors whereas the quorum for a meeting was four. Consequently the resolutions allotting the shares and making calls for the money were passed in meetings in which there was no quorum, The Official Liquidator relied upon Article 181 which is couched in the same words as s. 85, Companies Act, 1913, by which we are governed in these applications. This Article, widely worded as it is, supports his contention that in spite of the disqualifications of the Directors the resolutions passed by them are valid. In Hallows v. Fernie, (1867-3 Ch. A. 467 : 18 L. T. 340) the objection to the allotment of shares on the ground that the Directors who made the allotment did not possess the requisite-share qualification, was overruled on the basis of a provision in the English Companies Act similar to that contained Section 86, Indian Companies Act. In Dawson v. African Consolidated Land and Trading Co., (1898) 1 Ch. 6: (67 L. J. Ch. 47) a call made by Nielson a Director, was upheld though he had parted with all his shares and thus become disqualified and was not re-elected as: such on acquiring fresh shares before the call was made. Chitty L. J. emphasised the words "some defect in the appointment" and expressed the view that the provision is not so framed as to render valid a resolution passed by any persons who without a shadow of title assume to act as Directors of a company. There was' no defect in the appointment of Nielson as Director; he only became disqualified subsequently on his parting with his shares. His acting as Director in spite of the disqualification was held to be exactly within the words of the Article and one of those defects, irregularities or whatever else one ought to call them, which are remedied by Article 114 which is in almost the same words as our Article 181. An identical article again came up for discussion in British Asbestos Co. Ltd. v. Boyd, (1903) 2 Ch. 439 : (73 L. J. Ch. 31). Farwell J. stated at 'page 444:

> " It is not, therefore, that the facts are not known, but that the knowledge of the defect Is not present to the mind of any person to whom it is material at the time to

> know it. As it is put in Buckley on the Companies Acts, 8th Edn. p. 230, the object of an article like this and Section 67 of the General Act, Is to make the honest acts of de facto Directors as good as the honest acts of de jure Directors."

In the present case, the Directors certainly knew that they had not paid the allotment and call moneys, but there is nothing to indicate that the fact that they had thereby disqualified themselves was present to their minds at the time when they allotted the shares and made the calls. There was no defect in their appointment as Directors ; the only defect is that they continued to act as Directors even after their disqualification. There is no suggestion that they acted dishonestly in passing the resolutions of allotment and making the calls. It seems that they acted bona fide, oblivious of the fact of their disqualification. There is no evidence of the fact of their disqualification having ever been brought to their minds. The language of Article 181 fully protects their actions. Had it been a case of only one or two Directors continuing to act as such despite the disqualification, I would have had no hesitation in forming the conclusion that I have. Here we have to deal with a large number of Directors acting as such despite the qualification. But there is no other circumstance f com which it can be said that they were conscious of the fact of their disqualification and yet continued to act as Directors So I come to the conclusion, though not without some hesitation, that the acts of allotting the shares to the opposite parties and making the first and second calls were valid.

24. For the same reason the act of forfeiting the opposite parties' shares also must be held to be valid, The liability of the opposite parties to pay the moneys that are being demanded of them by the Official Liquidator arose before and is not wiped off by, the forfeiture. The only effect of the forfeiture is that the shares pass out of their hands the liability incurred previously to pay the allotment and call-moneys remains.

25. Some of the opposite parties purchased only ordinary shares. This only affects the amounts due from them : otherwise there is no difference between their cases and those of preferred share-holders.

26. No other dispute wag raised before us.

27. I would, therefore, allow all these applications and decree the suits; but I would not allow any costs to the Official Liquidator. The company must bear its costs of both Courts itself because it has not come out clean from this litigation and though justice lies on its side as regards the subject-matter of this litigation there is much for which its Directors and Managing Directors had to account to the opposite parties.

Mushtaq Ahmad, J.

28. I agree.

29. We allow this application, set aside the decree of the' lower appellate Court and decree the plaintiff applicant's suit. We make no order about the costs in all the three Courts.