

## ORIGINAL CIVIL.

Before Lord-Williams J.

1929.

Jan. 31.

RAMACKERS AND CO., LTD., *In re*.\*

*Company—Filing of returns of allotments of shares with the registrar after time—Duty of the Registrar of Joint-Stock Companies—Duty and liability of the person filing the documents—Practice—Indian Companies Act (VII of 1913), s. 104.*

Under section 104 of the Indian Companies Act of 1913, the Registrar of Joint Stock Companies is to file returns of allotments of shares, although presented to him for filing by any officer of the company after the expiration of the month specified by the section; the registrar is also to inform the said officer that steps will be taken for his prosecution for the said default upon his failure to obtain proper relief therefrom from the court within a specified time.

The effect of accepting and filing the documents after time by the registrar does not relieve the defaulter from any liabilities without proper relief being granted by the court.

APPLICATION by a director, who was also the secretary of the company.

The Ramackers and Company, Limited, was incorporated in 1925 as a private company limited by shares and commenced business shortly thereafter. By a resolution of the directors, at a meeting held on the 22nd of June, 1925, the applicant, Arthur Wilson (an original director) was appointed secretary of the company. Thereafter, from time to time, the directors made allotments of shares within the knowledge of the applicant, who, being then unaware of the provisions of section 104 of the Indian Companies Act (VII of 1913), did not submit for filing to the Registrar of Joint Stock Companies, Bengal, any returns of allotments of shares within one month of such allotments, as required by the said section. Section 104 (3) of the Indian Companies Act, amongst others, provides that, "in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the

\*Application in Original Civil Suit.

“ court for relief, and the court, \* \* \* \* may make  
 “ an order extending the time for the filing of the  
 “ document for such a period as the court may think  
 “ proper.”

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In the month of June, 1927, the applicant's attention was, for the first time, directed to the provisions of the said section 104 by the auditors of the company, when they were auditing its accounts. Thereupon, the applicant, upon enquiry, at the office of the Registrar of Joint Stock Companies, Bengal, was informed by the Assistant Registrar of the inability of his office to accept for filing any returns of allotments of shares referring to allotments, which had been made more than one month previous to presentation for filing of the returns of allotments required by the said section 104. He also intimated that no such returns of allotments of shares could be accepted for filing at his office without the leave of the court. The delay in making the present application was due to the continuous illness of the applicant since 1927.

The applicant, Arthur Wilson, moved, under section 104 (3) of the Indian Companies Act (VII of 1913), for an order extending the time for filing the returns of allotments of shares with the registrar after the expiration of 14 days from the date of the order granting leave to file the same.

*Mr. Carey Morgan*, Solicitor, made the application for the petitioner.

*Mr. Amir Ali*, for the company, was not called upon.

LORT-WILLIAMS J. In my opinion, the right construction of section 104 of the Indian Companies Act is that the Registrar of Joint Stock Companies should file the documents therein referred to when presented, in spite of the fact that they have not been presented for filing within the month specified, and that he should inform the officer of the company, who presents the document for filing, that, unless, within a time to be specified by the Registrar, the applicant obtains

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relief from the court, he (the Registrar) will take steps to prosecute him for his default. The effect of accepting and filing the document is not to relieve the person in default from the liability imposed by the section, unless he obtains relief from the court for the whole period during which he was in default, with an order extending the time for filing up to the time when he actually did file the documents.

With regard to the facts of this particular case, I am satisfied from the affidavits that, up to June, 1927, this applicant was not aware of the provisions of the law, although that is not a reason for which the court will necessarily give relief, and I am satisfied also that, at that time, he was informed by the registrar that the documents could not be filed until he had obtained relief from the court. I am not sure that I ought to give him relief for the whole of the intervening period from June, 1927, up to date, because, having been informed that it was necessary for him to obtain relief from the court before he could file this document, he took no step to obtain that relief for a considerable period. However, in all the circumstances, I think I am justified in granting relief. Therefore, the time for filing these documents will be extended until the 14th February, 1929.

Attorney for the applicant: *Carey Morgan.*

Attorneys for the company: *Sanderson & Co.*

A. K. D.